

IN THE MATTER OF
HEALTH CARE MANAGEMENT CORPORATION, ET AL.

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

Docket C-3182, Complaint, Feb. 20, 1986—Decision, Feb. 20, 1986

This consent order requires the Columbus, Ga. owner and operator of North Mobile Community Hospital near Mobile, Ala., and the hospital's medical staff, among other things, to cease imposing unlawful restrictions relating to the practice of podiatry at the hospital. The hospital and its staff are prohibited from imposing such restrictions by not enacting any bylaw or policy that would have the effect of: (1) coercing or intimidating any staff member not to co-admit podiatrists' patients; (2) requiring an amount of residency training for podiatrists that is not reasonably related to legitimate quality-of-care grounds; or (3) prohibiting podiatrists with hospital privileges from attending medical staff meetings.

Appearances

For the Commission: *Douglas B. Brown.*

For the respondents: *David W. Mernitz, Stark, Doninger, Mernitz & Smith, Indianapolis, Ind.*

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 respondents have violated the provisions of Section 5 of the Federal Trade Commission 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, stating its charges as follows:

PARAGRAPH 1: Respondent Health Care Management Corporation is a for-profit corporation existing under the laws of the State of Georgia. North Mobile Community Hospital ("the Hospital") is a division of Health Care Management Corporation, operating a general acute care hospital in the Mobile, Alabama, metropolitan area. The principal physical facilities of the Hospital are located at Hartley and Baker Roads, Satsuma, Alabama. Health Care Management Corporation is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44, and is subject to the Commission's jurisdiction.

PAR. 2. Respondent Medical Staff of North Mobile Community Hospital ("the Medical Staff") is an unincorporated association, organized and existing under the laws of the State of Alabama, and is located at the Hospital. It is composed of the physicians and other practitioners who have been granted privileges to attend patients at the Hospital.

PAR. 3: Most, if not all, of the members of the Medical Staff are engaged in the business of providing medical services for a fee. Except to the extent that competition has been restrained as herein alleged, most, if not all, of the Medical Staff's members have been and are now in competition among themselves and with other health care providers in the Mobile metropolitan area.

PAR. 4: Membership on the Medical Staff provides important economic benefits to the individual members, and it allows a practitioner to admit and treat patients at the Hospital and provides the opportunity for other professional benefits to its members. The Medical Staff is organized for the profit of its members, is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44, and is subject to the Commission's jurisdiction.

PAR. 5: Physicians in the Mobile, Alabama, metropolitan area charge fees and collect payments for their services that, in substantial part, are paid directly or indirectly with Federal funds or funds received interstate from insurance companies and from other payers. The flow of said funds is affected by competition among physicians in the Mobile metropolitan area and by the acts and practices of the Medical Staff and its members as hereinafter alleged. Moreover, medical practitioners in the Mobile metropolitan area treat out-of-state patients, and the ability of a medical practitioner to obtain hospital privileges may influence his or her decision to move to and practice in the Mobile metropolitan area. These acts and practices are in commerce or affect commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

PAR. 6: On January 14, 1981, a podiatrist applied to the Hospital for certain surgical privileges within the scope of his Alabama podiatry license. The Hospital encouraged the Medical Staff to grant privileges to the podiatrist because the Hospital desired to increase its occupancy rate and the utilization of its facilities.

PAR. 7: On September 2, 1981, the Hospital granted that podiatrist certain podiatric surgical privileges on the condition that he co-admit his patients with a medical doctor, in conformance with the standards of the Joint Commission on the Accreditation of Hospitals then in effect. Soon after that date, the podiatrist began to co-admit patients with at least two members of the Medical Staff.

PAR. 8: In July, 1982, some members of the Medical Staff, who were

in competition with podiatrists, began a drive to prevent podiatrists from performing surgery at the Hospital. Thereafter, beginning at least as early as October, 1982, some members of the Medical Staff, the Medical Staff acting as a combination of its members, and the Hospital joined in a combination and conspiracy to pressure individual physicians not to co-admit patients with any podiatrist and to impose on the practice of podiatry within the Hospital unreasonable restrictions that are not reasonably related to legitimate quality of care grounds.

PAR. 9: In furtherance of the aforesaid combination and conspiracy to impose on the practice of podiatry within the Hospital unreasonable restrictions that are not reasonably related to legitimate quality of care grounds, the Medical Staff, some members of the Medical Staff, and the Hospital engaged in the following acts and practices, among others:

A. Some members of the Medical Staff pressured individual physicians not to co-admit patients with any podiatrist;

B. The Medical Staff imposed restrictions unreasonably limiting the practice of podiatry within the Hospital:

1. The Medical Staff imposed severe restrictions regarding the supervision of podiatrists by members of the Medical Staff. Those restrictions were not reasonably related to quality of care and had the effect of raising costs and limiting the practical ability of the podiatrists to use the Hospital's surgical facilities;

2. The Medical Staff required all podiatrists who sought surgical privileges to have completed a three-year approved residency. However, the Medical Staff had no knowledge concerning the relevancy of the training received in the second and third years of podiatric residency training to the specific procedures for which privileges were requested, and it had no objective basis to believe that the three-year residency requirement was reasonably necessary to ensure quality of care for the specific procedures that the podiatrists sought privileges to perform. The effect of a three-year residency requirement would be to exclude virtually every podiatrist in the United States from obtaining surgical privileges; and

3. The Medical Staff prohibited podiatrists from attending Medical Staff meetings; and

C. The Hospital approved or enforced these restrictions and thereby joined in the aforesaid combination and conspiracy.

PAR. 10: As a result of the aforesaid combination, conspiracy, and conduct, the only podiatrist who retained privileges could not admit and treat surgical patients at the Hospital because no member of the Medical Staff would co-admit patients with him. Other podiatrists

were denied privileges there because of the aforesaid combination, conspiracy, and conduct.

PAR. 11: The purposes or effects and the tendency and capacity of the combination, conspiracy, conduct, and practices described in Paragraphs Eight, Nine, and Ten are and have been to restrain trade unreasonably and hinder competition between medical doctors and podiatrists for the care of the foot in the Mobile metropolitan area, and to deprive consumers of the benefits of competition in the following ways, among others:

A. Patients have been limited in their ability to choose among a variety of alternative types of health care providers competing on the basis of price, service, and quality;

B. Other hospitals may be deterred from granting reasonable surgical privileges to podiatrists; and

C. Podiatrists may be deterred from entering into practice in the Mobile area because of the lack of reasonable surgical privileges.

PAR. 12: The combination, conspiracy, and conduct described above constitute an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. Such combination, conspiracy, and conduct are continuing and will continue absent the entry against respondents of appropriate relief.

DECISION AND ORDER

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

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents 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 respondents have violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the execut-

ed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Health Care Management Corporation is a for-profit corporation existing under the laws of the State of Georgia. North Mobile Community Hospital is a division of Health Care Management Corporation, operating a general acute care hospital in the Mobile, Alabama, metropolitan area. The principal physical facilities of the Hospital are located at Hartley and Baker Roads, Satsuma, Alabama.

2. Respondent Medical Staff of North Mobile Community Hospital is an unincorporated association, organized and existing under the laws of the State of Alabama, and is located at North Mobile Community Hospital. It is composed of the physicians and other practitioners who have been granted privileges to attend patients at the Hospital.

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

ORDER

I

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

A. *Health Care Management Corporation* means the respondent, Health Care Management Corporation, a Georgia corporation, its officers, committees, representatives, directors, agents, employees, successors, and assigns.

B. *The Hospital* means North Mobile Community Hospital, a division of Health Care Management Corporation, its officers, committees, representatives, agents, employees, successors, and assigns. The Hospital is a general acute care hospital at Satsuma, Alabama. It does not include other hospitals owned or operated by Health Care Management Corporation that are not successors or assigns of North Mobile Community Hospital.

C. *The Medical Staff* means the respondent Medical Staff of North Mobile Community Hospital, its officers, committees, representatives, delegates, agents, employees, successors, and assigns. The Medical Staff is an unincorporated association of physicians and other practitioners who have been granted privileges by the Hospital to admit and attend patients at the Hospital.

D. *Corrective action* means action taken pursuant to and in conformance with the Medical Staff's bylaws against any person with clinical privileges at the Hospital who fails to provide evidence of malpractice insurance coverage or whose professional conduct or activities are detrimental to patient safety or to the delivery of quality patient care or are unreasonably disruptive to the operation of the Hospital.

II

It is ordered, That Health Care Management Corporation, in connection with the ownership and operation of the Hospital, shall cease and desist from, directly or indirectly or through any device, entering into, continuing, maintaining, adhering to, acquiescing in, or aiding and abetting any agreement, combination, or conspiracy to unreasonably restrict the practice of podiatry permitted under Alabama law, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to any agreement, combination, or conspiracy to:

A. Coerce or encourage any staff member not to co-admit a podiatrist's patient or otherwise associate professionally in the treatment of that patient with a podiatrist who is lawfully licensed in the State of Alabama and has been granted surgical privileges by the Hospital for the procedures for which the patient is admitted;

B. Enact, impose, or approve any bylaw, rule, regulation, policy, or practice that requires an amount of residency training for podiatrists that is not reasonably related to legitimate quality of care grounds with regard to the specific surgical procedures for which privileges are requested;

C. Enact, impose, or approve any bylaw, rule, regulation, policy, or practice relating to the practice of podiatry that is not reasonably related to legitimate quality of care grounds and that unreasonably restricts the practice of podiatry at the Hospital or unreasonably discriminates against podiatrists; or

D. Enact, impose, or approve any bylaw, rule, regulation, policy, or practice that restricts any podiatrist who has been granted privileges by the Hospital from attending Medical Staff meetings.

III

It is further ordered, That the Medical Staff shall cease and desist from, directly or indirectly or through any device, in or affecting

commerce, as "commerce" is defined in the Federal Trade Commission Act, the following:

A. Coercing or encouraging any staff member not to co-admit a podiatrist's patient or otherwise associate professionally in the treatment of that patient with a podiatrist who is lawfully licensed in the State of Alabama and has surgical privileges at the Hospital for the procedures for which the patient is admitted;

B. Enacting, imposing, participating in, recommending, or suggesting any restriction, bylaw, rule, regulation, policy, or practice that requires an amount of residency training for podiatrists that is not reasonably related to legitimate quality of care grounds with regard to the specific surgical procedures requested;

C. Enacting, imposing, participating in, recommending, or suggesting any restriction, bylaw, rule, regulation, policy, or practice relating to the practice of podiatry that is not reasonably related to legitimate quality of care grounds and that unreasonably restricts the practice of podiatry or unreasonably discriminates against podiatrists; or

D. Enacting, imposing, participating in, recommending, or suggesting any restriction, bylaw, rule, regulation, policy, or practice that restricts any podiatrist who has been granted privileges by the Hospital from attending Medical Staff meetings.

IV

It is provided, That this order shall not be construed to prohibit the Hospital or the Medical Staff or its members from engaging in credentialing, corrective action, utilization review, quality assurance, peer review, or hospital policy-making activities at the Hospital, where such conduct by the Hospital or the Medical Staff neither constitutes nor is part of any agreement, combination, or conspiracy whose purpose, effect, or likely effect is to impede unreasonably the practice of podiatry at the Hospital as permitted under Alabama law.

V

It is further provided, That nothing in this order shall require the Medical Staff or the Hospital to violate any Federal or State law.

VI

It is further ordered, That:

A. Within thirty (30) days after the date of service of this order, Health Care Management Corporation, in connection with its owner-

ship and operation of the Hospital, shall provide a copy of this order and of the complaint in this proceeding to each current officer and director of the Hospital, and, for a period of five (5) years after that date, provide a copy of such order and complaint to each new officer or director of the Hospital within thirty (30) days after each new officer or director is appointed or elected;

B. Within thirty (30) days after the date of service of this order, the Medical Staff shall provide a copy of this order and of the complaint in this proceeding to each officer of the Medical Staff and to each member of the Medical Staff who was an officer or a member, respectively, on the date of service of this order and, for a period of five (5) years after that date, provide a copy of such order and complaint to each person who becomes a member of the Medical Staff at the time that the person is notified of his or her acceptance to the Medical Staff;

C. Within ninety (90) days after the date of service of this order, each respondent shall file or cause to be filed with the Commission a written report setting forth in detail the manner and form in which it has complied with this order; and

D. In addition to the report required by Section VI(C), each respondent shall file, one (1) year after the date of service of this order and at such other times as the Commission or its staff may by written notice require, a written report setting forth in detail the manner and form in which it has complied and is complying with this order.

VII

It is further ordered, That within sixty (60) days after the date of service of this order, the Medical Staff and Health Care Management Corporation shall revise or change the respective restrictions, bylaws, rules, regulations, policies, and practices of the Medical Staff and the Hospital to conform with the provisions of this order and shall eliminate, modify, and change any restrictions, bylaws, rules, regulations, policies, or practices that unreasonably restrict the practice of podiatry at the Hospital. A copy of all such changes shall be included in the report required under Section VI (C) of this order.

VIII

It is further ordered, That each respondent notify the Commission of any proposed change in its organization that may affect compliance obligations arising out of this order at least thirty (30) days prior to such proposed change.

IN THE MATTER OF

RHODE ISLAND BOARD OF ACCOUNTANCY

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

Docket 9181. Complaint, July 10, 1984—Decision, Feb. 25, 1986

This consent order requires the Rhode Island Board of Accountancy, the sole licensing authority for CPAs and PAs in the state, among other things, to cease prohibiting accountants in the state from seeking business by truthful advertisements or other non-deceptive forms of solicitation. Respondent may continue to impose restrictions authorized by the state legislature against dishonest or fraudulent practices and against persons who falsely identify themselves as accountants.

Appearances

For the Commission: *Rendell A. Davis, Jr.*

For the respondent: *Linda Buffardi*, Providence, R.I. and *Christopher H. Little* and *Steven E. Snow*, *Tillinghast, Collins & Graham*, Providence, R.I.

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 Rhode Island Board of Accountancy has violated 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:

I. DEFINITIONS

1. For purposes of this complaint, the following definitions shall apply:

- (a) *Board* means the respondent named above, the Rhode Island Board of Accountancy;
- (b) *Rhode Island* means the State of Rhode Island and Providence Plantations;
- (c) *CPA* means certified public accountant;
- (d) *PA* means public accountant; and
- (e) *encroachment* means the endeavor of a CPA or PA to provide