

IN THE MATTER OF

THE NORTH CAROLINA ORTHOPAEDIC ASSOCIATION

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

Docket C-3200. Complaint, Sept. 19, 1986—Decision, Sept. 19, 1986.

This consent order, among other things, prohibits The North Carolina Orthopaedic Assoc. from placing unreasonable restrictions against podiatrists seeking access to hospital facilities or surgical privileges and inducing hospitals or medical staffs to deny such privileges to qualified podiatrists.

Appearances

For the Commission: *Douglas B. Brown and Charles Peterson.*

For the respondent: *George L. Little, Jr. and F. Joseph Treacy, Petree, Stockton, Robinson, Vaughn, Glaze & Maready, Winston-Salem, N.C.*

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 North Carolina Orthopaedic Association, a non-profit corporation, hereinafter sometimes 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, the North Carolina Orthopaedic Association, is a non-profit corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina.

PAR. 2. Respondent is a professional association organized in substantial part to represent the interests of orthopedic surgeons who practice in North Carolina and the profession of orthopedics in North Carolina. Respondent has approximately 225 members. Many of respondent's activities are of a scientific and educational nature. 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. Most members of the North Carolina Orthopaedic Association provide medical care for a fee. Most, if not all, of respondent's members have been and are now in competition among themselves and with other health care providers in the State of North Carolina.

PAR. 4. In the course of their treatment of patients, North Carolina orthopedic surgeons:

- (a) receive and treat patients from other states;
- (b) receive substantial sums of money from the federal government and from private insurers for rendering medical services, which money flows across state lines; and
- (c) prescribe medicines and medical devices that are shipped in interstate commerce.

PAR. 5. There are approximately 100 podiatrists in North Carolina. Most of them are engaged in the business of providing podiatric services for a fee. Podiatrists in North Carolina are licensed to provide diagnostic, medical and surgical services limited to the foot. Podiatrists compete with orthopedic surgeons in the delivery of some health care services.

PAR. 6. In the course of their treatment of patients, North Carolina podiatrists:

- (a) receive and treat patients from other states;
- (b) receive substantial sums of money from the federal government and from private insurers for rendering medical services, which money flows across state lines; and
- (c) prescribe medicines and medical devices that are shipped in interstate commerce.

PAR. 7. Graduates of podiatry schools and residency programs in podiatry decide where to practice based on a number of factors. One important factor for many podiatrists is their ability to obtain access to hospital facilities that allow them to perform surgery within the scope of their state licenses and in accordance with their training and experience.

PAR. 8. The acts or practices described herein are in interstate commerce or affect the interstate activities of respondent's members, third parties who pay for orthopedic services, hospitals, podiatrists, or others, 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. 9. Respondent has agreed, combined, or conspired with some of its members and with others to engage in conduct that unreasonably restrains the practice of podiatry. In particular, they have agreed, combined, or conspired to take action to exclude or unreasonably discriminate against podiatrists who seek, within the scope of their professional licenses as described in Paragraph Five, surgical privi-

leges or access to or use of hospital facilities. As part of or in furtherance of the agreement, combination, or conspiracy regarding podiatry, respondent passed two resolutions opposing the hospital practice of podiatry, its members were enjoined to review or change hospital bylaws accordingly, and some of respondent's members have participated in such review or change of hospital bylaws.

PAR. 10. The purposes or effects and the tendency and capacity of the agreement, combination, or conspiracy and the acts and practices described in Paragraph Nine of this complaint are and have been to unreasonably restrain competition and to deny to the public the benefits of competition in the following ways, among others:

(a) Competition based on price, quality and service in the delivery of professional health services has been lessened;

(b) The ability of patients and prospective patients to select a licensed practitioner of their choice has been hindered;

(c) The ability of podiatrists to compete with medical doctors has been restricted; and

(d) Podiatrists have been discouraged from practicing in North Carolina because of the difficulty of obtaining hospital privileges.

PAR. 11. The aforesaid agreement, combination, or conspiracy and the acts and practices of respondent constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. Such agreement, combination, or conspiracy and the acts and practices of respondent are continuing and will continue in the absence of the relief herein requested.

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 Atlanta 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, its attorneys, 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 the 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, and having duly considered the comment filed thereafter by an interested person pursuant to Section 2.34 of its Rules, 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 North Carolina Orthopaedic Association is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina.

2. The Federal Trade Commission has jurisdiction of the subject matter of the proceeding and of respondent, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That, for the purpose of this order, *respondent* means the North Carolina Orthopaedic Association, a non-profit corporation, its Executive Committee, officers, representatives, agents, employees, successors, and assigns.

II.

It is ordered, That respondent shall cease and desist from, directly or indirectly or through any corporate or other device, in or in connection with respondent's activities as a professional non-profit association in or affecting commerce, the following:

A. Entering into, continuing, maintaining, adhering to, acquiescing in, or aiding and abetting any agreement, combination or conspiracy to unreasonably exclude, unreasonably discriminate against, or place unreasonable restrictions on any podiatrist seeking or having surgical privileges at any hospital or access to or use of any hospital facilities, when such privileges, access or use is permitted under North Carolina law;

B. Inducing or seeking to induce any hospital, hospital medical staff, physician, or other person or entity to obstruct or deny surgical privileges at any hospital or access to or use of any hospital facilities

by the podiatric profession or any licensed podiatrist through any representation that is false or deceptive within the meaning of the Federal Trade Commission Act.

Provided, That nothing in subpart II(B) shall prohibit respondent from making or publishing a representation for which respondent possesses a reasonable basis regarding the training, education, practice, or other qualifications of podiatrists or any individual podiatrist.

Provided further, That nothing in this order shall prohibit respondent from exercising rights guaranteed by the First Amendment to the United States Constitution to petition any federal, state, or local government, executive agency or legislative body concerning legislation, rules or procedures, or to participate in any federal, state, or local administrative or judicial proceeding.

III.

It is further ordered, That, within sixty (60) days after the date of service of this order, respondent shall:

A. Mail or otherwise furnish a copy of this order, accompanied by the cover letter attached as Appendix I, to each person who on the date of service of this order is a member of respondent and to each person who on the date of service of this order is an executive employee of respondent;

B. Mail or personally deliver a copy of this order, accompanied by the cover letter attached as Appendix I, to the President of the North Carolina Medical Society;

C. Withdraw any policy, standard, or position regarding podiatry, if any, that is inconsistent with the terms of Part II of this order.

IV.

It is further ordered, That respondent shall:

A. File a written report with the Commission within ninety (90) days following the date of service of this order, and annually on the anniversary of the date of service of this order for a period of five (5) years, and at such other times as the Commission or Commission staff may by written notice to respondent require, setting forth in detail the manner and form in which it has complied with this order;

B. For five (5) years after the date of service of this order, maintain and make available to the Commission staff, for inspection and copying upon reasonable notice, any documents regarding podiatric clini-

cal privileges or access to hospital facilities, podiatric training or education, or the appropriate scope of practice by podiatrists; and

C. For five (5) years after the date of service of this order, provide each new member and each new executive employee of the respondent, or any other employee whose responsibilities include disseminating respondent's views, with a copy of this order at the time he or she is accepted into membership or employment.

V.

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

APPENDIX I

Dear [Sir or Madam]:

As you may know, on _____ the Federal Trade Commission issued a Consent Order settling charges that the North Carolina Orthopaedic Association (NCOA) has been involved in activities that restricted the lawful practice of podiatry and restrained competition between medical doctors and podiatrists. This order was entered as part of a compromise settlement in order to save NCOA the expense of defending a costly litigation and without any admission whatsoever of any wrongdoing on the part of NCOA. NCOA has not admitted that it has violated the law, nor admitted that it has done the acts alleged in the Complaint except those relating solely to jurisdiction.

Under the terms of the Order issued by the Commission, among other things, NCOA is prohibited from entering into or maintaining any agreement or conspiracy to unreasonably exclude or discriminate against any podiatrist seeking or having surgical privileges at any hospital or access to or use of any hospital facilities, when such privileges, access or use is permitted under North Carolina law.

The Order also prohibits NCOA from inducing any hospital, hospital medical staff, physician, or other person or entity to obstruct or deny surgical privileges at any hospital or access to or use of any hospital facilities by the podiatric profession or any licensed podiatrist through any representation for which NCOA does not have a reasonable basis.

The Order, however, does not prohibit NCOA or its members from exercising their First Amendment rights to petition any legislative or executive body concerning any rules, legislation, or procedures, or participating in any administrative or judicial proceeding. The Order does not prevent any individual from engaging in unilateral conduct, in an individual capacity and not as an officer, agent or representative of NCOA.

Decision and Order.

108 F.T.C.

Pursuant to the Order issued by the Federal Trade Commission, we are withdrawing all of our policies and statements relating to podiatry, if any, that are not consistent with the Order.

Your attention to these matters will be appreciated. Thank you for your cooperation.

Sincerely,

President
The North Carolina Orthopaedic Association

IN THE MATTER OF
PITTSBURGH PENN OIL COMPANY, ET AL.

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

Docket 9203. Complaint, Jan. 16, 1986—Decision, Sept. 29, 1986

This consent order requires, among other things, a Creighton, Pa. automotive fluids company to cease falsely representing that its automotive oils, transmission fluids and antifreeze meet standardized industry ratings and standards established by Ford and General Motors.

Appearances

For the Commission: *James K. Leonard, Nathan P. Owen and Tamra S. Kempf.*

For the respondents: *Stephen J. Laidhold, Lampl, Sable, Makoroff & Libenson, Pittsburgh, Pa.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Pittsburgh Penn Oil Company, a corporation, and Fred Danovitz, individually and as an officer of said corporation ("respondents"), have violated 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, alleges:

PARAGRAPH 1. (a) Respondent Pittsburgh Penn Oil Company is a Pennsylvania corporation with its principal office and place of business located at Box 296, Route 28, Freeport Road, Creighton, PA.

(b) Respondent Fred Danovitz is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. His principal office and place of business is the same as that of the corporate respondent.

(c) Respondents cooperate and act together in carrying out the acts and practices alleged in this complaint.

PAR. 2. Respondents are, and have been, engaged in the production and sale of substantial quantities of engine oil, automatic transmission fluid, antifreeze-coolant and other automotive and petroleum products. Respondents package their products under the brand names of the corporate respondent, including Prize Penn, Sure-Matic and