

IN THE MATTER OF
PHYSICIANS OF MEADVILLE, ET AL.

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

Docket C-3209. Complaint, March 2, 1987—Decision, March 2, 1987

This consent order prohibits, among other things, 61 doctors in Meadville, Pennsylvania from entering into any agreement to refuse to deal with any physician, group of physicians, or hospital, or from refusing to refer patients, for the purpose of restricting or lessening competition.

Appearances

For the Commission: *L. Barry Costilo, Garry R. Gibbs and George R. Bellack.*

For the respondents: *Barbara A. Blackmond, Horty, Springer & Mattern*, Pittsburgh, Pa., for respondent Robert N. Moyers, M.D. *Pro se* for all remaining respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended (Title 15, U.S.C. Section 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 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. The respondents are physicians practicing in Crawford County, Pennsylvania, in or near the city of Meadville, Pennsylvania. The respondents are engaged in the business of providing health care services to patients for a fee.

PAR. 2. Except to the extent that competition has been restrained as alleged herein, respondents have been and are now in competition among themselves or with other physicians.

PAR. 3. Respondents constitute approximately eighty percent of all physicians on the active medical staffs at Meadville City Hospital and Spencer Hospital, the two hospitals in the Meadville area.

PAR. 4. Respondents' fees are often paid directly or indirectly from outside of Pennsylvania by third-party payors. Respondents purchase and use drugs, supplies, and equipment manufactured outside of

Pennsylvania. Respondents refer patients to physicians located outside of Pennsylvania, and treat patients who are not Pennsylvania residents. Respondents' general business practices, and the conduct described below, affect the interstate flow of funds, the interstate purchase of medical supplies and products, and the interstate movement and billing of patients. Respondents' general business practices, and the acts and practices described below, are in or affect commerce within the meaning of Section 5 (a)(1) of the Federal Trade Commission Act, 15 U.S.C. Section 45 (a)(1).

PAR. 5. Early in 1985, a group of physician specialists on the medical staff of St. Vincent Health Center, an Erie, Pennsylvania, hospital, formulated plans to establish a multispecialty medical office in or near Meadville, approximately 35 miles south of Erie. This group (hereinafter "Erie Group") planned the new office so that members of the Erie Group who already treated patients from Meadville, and areas more distant from Erie, could provide treatment in a location more convenient to those patients, and so that members of the Erie Group could compete more effectively for referrals of patients from Meadville and other nearby areas.

PAR. 6. Since at least April 1985, each of the respondents has combined or conspired with at least some of the other respondents in restraint of trade to prevent or delay the establishment of the Erie Group medical office in the Meadville area.

PAR. 7. In furtherance of the above combination or conspiracy, respondents, among other actions, exerted coercive pressure both directly and indirectly against the Erie Group by jointly threatening to cease referring, or to not refer, patients to Erie Group physicians or any other specialists practicing at St. Vincent Health Center if the Erie Group established a Meadville office. Respondents made this threat by letter dated April 30, 1985 (attached hereto), which was sent to the administrator, members of the Board of Corporators, and members of the medical staff of St. Vincent Health Center, including the members of the Erie Group, and to the President of the Erie County Medical Society. After the threat, the Erie Group suspended its plans to establish a medical office in the Meadville area.

PAR. 8. The purposes or effects or the tendency and capacity of the combination or conspiracy and conduct described in paragraphs six and seven are or have been to restrain trade unreasonably, hinder competition in the provision of health care services in the area of Meadville, Pennsylvania, and deprive consumers of the benefits of competition, in the following ways, among others:

A. The Erie Group has been deterred from providing health care services in the Meadville, Pennsylvania, area, thereby limiting com-

petition among physicians for patients on the basis of price, service, and quality;

B. Other health care providers and provider groups from outside the Meadville area are or may be deterred from establishing offices or facilities that compete with Meadville area physicians;

C. Patients' options in selecting a physician may be limited; and

D. Some patients may be required to travel greater distances, at additional expense and inconvenience, to obtain their preferred health care services.

PAR. 9. The combination or conspiracy and the conduct described above constitute an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. Section 45. The violation, or the effects thereof, is continuing and will continue in the absence of the relief requested.

109 F.T.C.

ATTACHMENT

April 30, 1985

The Meadville area physicians have historically supported both tertiary hospitals in Erie. A group of Saint Vincent specialists now proposes to open an office in Meadville. A distinction has been drawn between this group and the institution itself. We do not recognize the distinction.

We regard this uninvited extension of services as unwarranted and inconsistent with the good will which we have heretofore shown Saint Vincent. Such an action may jeopardize our relationship with all Saint Vincent consultants — not just the satellite specialists.

Signed,

Christopher W. Thomas M.D.

Charles A. Lester A.

Home Mr. W. H. M.D.

Attesty A. Robertson, &c. M. H. Kline, MD

A. G. Sinner gen. u. s.

Paul A. Kelly, MD.

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John H. Kent

Perman E. Dixon

Henry Bayfield

3.3. Instruktor struktur FK 147

cc: Sister Margaret Ann Hardner, Administrator,
Members of Saint Vincent Medical Staff.

Members of Saint Vincent Board of Corporation
President, Erie County Medical Society

11/10/1910

Gerald R. Foy, M.D.

J. Nesbitt M.D.

Carl H. Ford MD

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Lee, Kitchener MD.

Aimee H. Day Lester

Arthur D. Jones

22/11/2019

~~Joseph L. Firrell~~
Full W. Stillborn Jr. MD.

[Signature]

[illegible]

pers. J. L. C. Tyler, Jr.

W. H. Sullivan m
W. H. Sullivan m

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Signatures continued:

June 7, 1908, D.C.
 John A. Smith, M.D.
 Wash. May 15 B.
 etc. Sangh B.B.
 Henry Van...
 Henry Van...
 Robert...
 Robert...
 Lins. P. Gony...
 Benjamin Lee, M.D.
 J. O. ...
 J. Zimmerman M.D.
 D. Sacreira, M.D.
 ...
 V.R. Ordinario f. m.s
 P. H. Fox, M.D.
 ...
 Edward M. Jones M.D.
 ...

SIGNATURES - PAGE 1.

Azhar Aslam M.D.	M. Moakeh M.D.
Mary B. Hagamen M.D.	Curt H. Laub M.D.
Christopher W. Thomas M.D.	R.M. Vrablik M.D.
Ovunda A. Lawson D.O.	R. J. Bridge M.D.
Thomas M. Watson M.D.	Tariq Qureshi M.D.
Stacey A. Robertson M.D.	Danilo L. Guanzon M.D.
W.J. Morris M.D.	Lucy Kirchner M.D.
A.G. Deininger M.D.	Aiman N. Daghestani
Ronald A. Kellogg M.D.	W.T. Holland, Jr. M.D.
William K. Petrella D.O.	Robert A. Driscoll M.D.
J.T. Arno M.D.	Barry B. Bittman M.D.
Robert Moyers M.D.	Joseph G. Piroch M.D.
Randy S. Zelen M.D.	Fred W. Strickland, Jr. M.D.
David Dunn M.D.	T. Downing M.D.
James H. Larson M.D.	M. Bruce Dratler M.D.
Vernon E. Dean	A. O. Hibbard M.D.
J. Henry Burkholder M.D.	S.E. Moutsos M.D.
B. McIntosh M.D.	J.O. Taylor M.D.
R.L. Kirkpatrick M.D.	W. Sullivan M.D.
Gerald M. Brooks M.D.	Rebecca F. Morris M.D.
J.B. Nesbitt M.D.	

SIGNATURES - PAGE 2.

Nicholas J. Fedorka D.M.D.	C.T. Cortes, Jr. M.D.
Lawson C. Smart M.D.	J. Zinamosca D.O.
Donald LaVay M.D.	D. Saavedra M.D.
Vic Farrah D.O.	David D. Kirkpatrick, Jr. M.D.
Renato P. Ramirez M.D.	V.R. Ordinario, Jr. M.D.
Kwang Choi M.D.	P.T. Poux M.D.
Robert Santora	L. Pagniello M.D.
Robert Concilus M.D.	Edward M. Fine M.D.
Luis P. Gomez	Mark R. Foster M.D.
Seung C. Lee M.D.	James R. McLamb
E.J. Owens D.O.	G. Kwitka M.D.

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 Bureau of Competition

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 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 procedures 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. Respondents are physicians licensed and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with their offices and principal places of business located at the addresses listed in the Appendix attached hereto.

2. 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.

It is ordered, That each respondent, directly or indirectly or through any device, shall cease and desist from entering into, maintaining or continuing, or attempting to enter into, maintain or continue, any agreement or understanding, either express or implied, to refuse to deal with or to withhold patient referrals from any physician, group of physicians, or other health care provider, or to refuse to deal with or to withhold patient admissions from any hospital.

Provided, however, that this Section shall not be construed to prohibit any respondent from participating in hospital medical staff credentialing recommendations, hospital medical staff credentialing decisions in his or her capacity as a hospital board member, hospital

utilization review, hospital peer review, hospital quality assurance, or hospital policy making, where such conduct by the respondent neither constitutes nor is part of any agreement, combination or conspiracy whose purpose, effect or likely effect is to impede competition unreasonably.

II.

It is further ordered, That each respondent shall cease and desist from directly or indirectly, or through any device:

A. For a period of five years following the effective date of this order, making any threat, express or implied, including but not limited to any threat to refuse to deal with or to withhold patient referrals from any physician, group of physicians, or other health care provider, or to refuse to deal with or to withhold patient admissions from any hospital, for the purpose of restricting or lessening competition; or

B. Inducing or attempting to induce any person to refuse to deal with or to withhold patient referrals from any physician, group of physicians, or other health care provider, or to refuse to deal with or to withhold patient admissions from any hospital, for the purpose of restricting or lessening competition.

III.

A. *It is further ordered,* That within thirty (30) days after service of this order, the respondents shall mail a copy of this order and the accompanying complaint to the Administrator, Board of Corporators, and each member of the medical staff of St. Vincent Health Center, Erie, Pennsylvania, and to the President of the Erie County Medical Society.

B. *It is further ordered,* That each respondent shall, within sixty (60) days after service of this order, and at any time the Commission, by written notice, may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which the respondent has complied with this order.

C. *It is further ordered,* That each respondent shall promptly notify the Commission of any change in respondent's business address set forth in the Appendix to this order.

APPENDIX

J. Thomas Arno, M.D.: 149 North Main Street, Meadville, Pennsylvania 16335;

Azhar Aslam, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;

Barry B. Bittman, M.D.: 149 North Main Street, Meadville, Pennsylvania 16335;

Raymond J. Bridge, M.D.: R.D. #2, Box 96, Conneaut Lake, Pennsylvania 16316;

Gerald M. Brooks, M.D.: 403 Euclid Avenue, Saegertown, Pennsylvania 16433;

J. Henry Burkholder, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;

Kwang Y. Choi, M.D.: 505 Poplar Street, Meadville, Pennsylvania 16335;

Candido T. Cortes, Jr., M.D.: 505 Poplar Street, Meadville, Pennsylvania 16335;

Aiman N. Daghestani, M.D.: 773 North Main Street, Meadville, Pennsylvania 16335;

Arthur G. Deininger, M.D.: 390 Park Avenue, Meadville, Pennsylvania 16335;

Timothy Downing, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;

M. Bruce Dratler, M.D.: 505 Poplar Street, Meadville, Pennsylvania 16335;

Robert A. Driscoll, M.D.: Meadville City Hospital, 751 Liberty Street, Meadville, Pennsylvania 16335;

David W. Dunn, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;

Victor B. Farrah, D.O.: 505 Poplar Street, Meadville, Pennsylvania 16335;

Nicholas J. Fedorka, D.M.D.: 226 Park Avenue, Meadville, Pennsylvania 16335;

Edward M. Fine, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;

Mark R. Foster, M.D.: 766 Liberty Street, Meadville, Pennsylvania 16335;

Luis C. Gomez, M.D.: 505 Poplar Street, Meadville, Pennsylvania 16335;

Danilo L. Guanzon, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;

Mary B. Hagamen, M.D.: 432 Main Street, Saegertown, Pennsylvania 16433;

Alanson O. Hibbard, M.D.: 838 Park Avenue, Meadville, Pennsylvania 16335;

William T. Holland, Jr., M.D.: 899 Grove Street, Meadville, Pennsylvania 16335;

Ronald A. Kellogg, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;

Lucille Kirchner, M.D.: Meadville City Hospital, 751 Liberty Street, Meadville, Pennsylvania 16335;

David D. Kirkpatrick, Jr., M.D.: 279 Walnut Street, Meadville, Pennsylvania 16335;

Robert L. Kirkpatrick, M.D.: 1058 South Main Street, Meadville, Pennsylvania 16335;

George Kwitka, M.D.: Meadville City Hospital, 751 Liberty Street, Meadville, Pennsylvania 16335;

James H. Larson, M.D.: 491 Jackson Park Drive, Meadville, Pennsylvania 16335;

Curtis H. Laub, M.D.: 766 Liberty Street, Meadville, Pennsylvania 16335;

Donald E. LaVay, M.D.: Spencer Hospital, 1034 Grove Street, Meadville, Pennsylvania 16335;

Ovunda A. Lawson, D.O.: 217 North Street, Meadville, Pennsylvania 16335;

Seung C. Lee, M.D.: Spencer Hospital, 1034 Grove Street, Meadville, Pennsylvania 16335;

Brian F. McIntosh, M.D.: Meadville City Hospital, 751 Liberty Street, Meadville, Pennsylvania 16335;

James R. McLamb, M.D.: 766 Liberty Street, Meadville, Pennsylvania 16335;

Mohamed Moakeh, M.D.: 773 North Main Street, Meadville, Pennsylvania 16335;

Rebecca F. Morris, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;

William J. Morris, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;

Spero E. Moutsos, M.D.: 370 Chestnut Street, Meadville, Pennsylvania 16335;

Robert N. Moyers, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;

John B. Nesbitt, M.D.: 279 Walnut Street, Meadville, Pennsylvania 16335;

Vincente R. Ordinario, Jr., M.D.: Third Street, Conneaut Lake, Pennsylvania 16316;

Edward J. Owens, D.O.: 118 Railroad Street, Cambridge Springs, Pennsylvania 16403;

Lucia Pagniello, M.D.: 508 North Main Street Ext., Meadville, Pennsylvania 16335;

William K. Petrella, D.O.: 823 Chestnut Street, Meadville, Pennsylvania 16335;

Joseph G. Piroch, M.D.: 7 Lakeside Square, Conneaut Lake, Pennsylvania 16316;

Paul T. Poux, M.D.: P.O. Box 127, Guys Mills, Pennsylvania 16327;

Tariq Qureshi, M.D.: Meadville City Hospital, 751 Liberty Street, Meadville, Pennsylvania 16335;

Renato P. Ramirez, M.D.: Linesville Medical Center, West Erie Street, Linesville, Pennsylvania 16424;

Stacey A. Robertson, D.O.: 402 Main Street, Saegertown, Pennsylvania 16433;

Diogenes A. Saavedra, M.D.: 664 Highland Avenue, Meadville, Pennsylvania 16335;

Robert A. Santora, M.D.: 505 Poplar Street, Meadville, Pennsylvania 16335;

Lawson C. Smart, M.D.: 766 Liberty Street, Meadville, Pennsylvania 16335;

Fred W. Strickland, Jr., M.D.: 495 Pine Street, Meadville, Pennsylvania 16335;

William D. Sullivan, M.D.: Meadville City Hospital, 751 Liberty Street, Meadville, Pennsylvania 16335;

John O. Taylor, M.D.: 843 Park Avenue, Meadville, Pennsylvania 16335;

Christopher W. Thomas, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;

Ronald M. Vrablik, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;

Thomas M. Watson, M.D.: 505 Poplar Street, Meadville, Pennsylvania 16335;

Randy S. Zelen, M.D.: 149 North Main Street, Meadville, Pennsylvania 16335; and

John B. Zinamosca, M.D.: 505 Poplar Street, Meadville, Pennsylvania 16335.

Complaint

109 F.T.C.

IN THE MATTER OF

C & D ELECTRONICS, INC., ET AL.

CONSENT ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3212. Complaint, March 6, 1987—Decision, March 6, 1987*

This consent order prohibits, among other things, a Jenison, Mich. manufacturer and marketer of cable television decoders from selling or distributing the decoders to any unauthorized purchasers and requires respondents to cease representing that: (1) consumers can lawfully own or use decoders; (2) the use of decoders is legal without authorization from a cable company; or (3) ownership or use of a cable decoder is similar to the ownership or use of a telephone. The consent order also requires respondents to make an affirmative disclosure with the sale of any of their cable television decoders.

Appearances

For the Commission: *Alan E. Krause.*

For the respondents: *G.R. McIneney*, Grand Rapids, MI.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondents C&D Electronics, Inc., a corporation, and David Barwacz and Larry Bostelaar, individually and as officers of the corporation, have violated the provisions of Section 5(a) 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 its complaint and alleges that:

PARAGRAPH 1. Respondent C&D Electronics, Inc., is a Michigan Corporation with its principal place of business located at 2026 Chicago Avenue, Jenison, Michigan 49428.

PAR. 2. Respondent Larry Bostelaar is an individual residing at 7920 Ronson, Jenison, Michigan 49428. He is a stockholder, officer and director of C&D Electronics, Inc. Individually or in concert with others, he formulated, directed and controlled the acts and practices of respondent C&D Electronics, Inc., including the acts and practices alleged in this complaint.

PAR. 3. Respondent David Barwacz is an individual residing at 2532 Northborough Court, NE, Grand Rapids, Michigan 49505. He is a stockholder, officer and director of C&D Electronics, Inc. Individually