

IN THE MATTER OF

ROCHESTER ANESTHESIOLOGISTS, ET AL.

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

Docket 9199. Complaint, Sept. 30, 1985—Decision, Mar. 8, 1988

This consent order prohibits, among other things, the anesthesiologists, of Rochester, N.Y., from boycotting third-party insurance providers: by combining or taking any joint action against competing anesthesiologists; by engaging in price fixing or tampering with the reimbursement levels or terms of any third-party payor for anesthesia services; or by fixing or setting their fees.

Appearances

For the Commission: *David M. Narrow.*

For the respondents: *Kenneth A. Payment, Harter, Secrest & Emery, Rochester, N.Y. Harry P. Truehart, III, Nixon, Hargrave, Devans & Doyle, Rochester, N.Y. Robert Conklin, Hodgson, Russ, Andrews, Woods & Goodyear, Buffalo, N.Y. and James S. Grossman, Mousaw, Vigdor, Reeves, Heilbronner & Kroll, Rochester, N.Y.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that respondents have violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, 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:

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

(a) "*Blue Shield*" means Genesee Valley Medical Care, Inc., also known as Blue Shield of the Rochester Area.

(b) "*Third-party payor*" means any person or entity that engages in the process of reimbursing for, purchasing, or paying for health care services provided to any other person. Third-party payors include, but are not limited to, health insurance companies; prepaid hospital, medical or other health service plans, such as Blue Shield and Blue Cross plans; health maintenance organizations; preferred provider

organizations; government health benefits programs; administrators of self-insured health benefits programs; and employers or other entities providing self-insured health benefits programs.

2. The following are the respondents' addresses:

(a) The address of respondents Jose F. Calimlim, M.D.; Frank J. Colgan, M.D.; Svend Eldrup-Jorgensen, M.D.; Jim E. Fuller, M.D.; Alastair J. Gillies, M.D.; Robert M. Lawrence, M.D.; Clara L. Linke, M.D.; Sylvia H. Marshall, M.D.; John A. Moreland, M.D.; Sriyalatha I. Nadaraja, M.D.; Seymour J. Sandler, M.D.; Pratima M. Shah, M.D.; Jaimala Thanik, M.D.; and Judit S. Wagner, M.D., is Strong Memorial Hospital, 601 Elmwood Avenue, Rochester, New York.

(b) The address of respondents Robert L. Jamison, M.D.; Stuart L. Kaplan, M.D.; Jacob Krieger, M.D.; Mehdi-Mohtashemi, M.D.; Kariappa Narayan, M.D.; David A. Sherman, M.D.; Roger Thompson, M.D.; and Tae B. Whang, M.D., is Rochester General Hospital, 1425 Portland Avenue, Rochester, New York.

(c) The address of respondents Marjanne H. Crino, M.D.; Theodore G. Ford, M.D.; Bridget A. Fraser, M.D.; Robert P. Geraci, M.D.; Manuel Gonzales, M.D.; David Hwei-Yu Hsu, M.D.; Shirley D. Hunter, M.D.; Gary C. Kent, M.D.; Paul P. Marocco, M.D.; Naseer A. Tahir, M.D.; Michael M.H. Tan, M.D.; Richard C. Templeton, M.D.; and Balkrishna Venkatesh, M.D., is the Genesee Hospital, 224 Alexander Street, Rochester, New York.

3. The respondents are medical doctors specializing in the practice of anesthesiology.

4. Respondents are engaged in the business of providing anesthesia services to patients for a fee. Fees for respondents' services are paid, at times, by patients or third-party payors in states other than New York and, at times, by patients or third-party payors in New York State with funds collected from third-party payors in states other than New York. The funds used by third-party payors to pay the fees for respondents' services are sometimes collected from employers and employees in states other than New York. Respondents' general business practices, and the acts and practices 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 affected commerce within the meaning of Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1).

5. Except to the extent that competition has been restrained as alleged herein, respondents have been and are now in competition

with at least some of the other respondents and with other anesthesiologists.

6. Anesthesiologists in Rochester may participate in various plans offered by certain third-party payors, including Blue Shield, by signing a participation agreement. Such agreements usually provide that the third-party payor will reimburse the participating physician directly for services provided to its subscribers, and that the participating physician will, in most situations, not charge more than an agreed-upon amount.

7. Each of the respondents have combined or conspired with at least some of the other respondents or others, in most cases since at least 1979, to restrain competition over certain terms of dealing with third-party payors and consumers, in order to increase the fees paid to them for providing anesthesia services. In furtherance thereof, respondents, among other things, have:

- (a) agreed to negotiate collectively over the pricing terms on which they would participate in plans offered by third-party payors;
- (b) engaged in such collective negotiations;
- (c) agreed to threaten to departicipate from or not to participate in certain plans offered by third-party payors;
- (d) concertedly threatened, explicitly or implicitly, to departicipate from or not to participate in certain plans offered by third-party payors;
- (e) agreed to departicipate from or not to participate in certain plans offered by third-party payors; and
- (f) concertedly departicipated from or refused to participate in certain plans offered by third-party payors.

8. In particular, for example, respondents jointly negotiated, through a committee of representatives, with Blue Shield during the summer and fall of 1980 in order to obtain substantially higher payments from Blue Shield. In the course of such negotiations, respondents' representatives communicated to or threatened Blue Shield that if their demand for substantially higher reimbursement was not met, respondents would departicipate from Blue Shield. Respondents subsequently departicipated concertedly from Blue Shield and increased significantly the fees they obtained for services rendered to Blue Shield subscribers. Since departing, none of respondents has participated in Blue Shield and no anesthesiologist at any of Rochester's three largest hospitals currently participates in Blue Shield. As a result of the departicipations, consumers in Rochester have suffered substantially increased costs for anesthesia services.

9. As an additional example, at various times since 1979 at least some respondents, through a representative or representatives, joint-

ly negotiated with Preferred Care, a health maintenance organization doing business in Rochester, in order to obtain higher payments from Preferred Care. In the course of such negotiations, those respondents communicated to or threatened Preferred Care that if their demands for higher reimbursement at the rates they specified were not met, they would refuse to participate in Preferred Care or to render services to Preferred Care subscribers. Preferred Care, in each instance, acceded to the demand for higher reimbursement at the rates specified by those respondents. As a result, Preferred Care incurred higher costs for providing anesthesia services to its subscribers and, in turn, Preferred Care subscribers incurred increased premium costs paid to Preferred Care.

10. Respondents' actions described above in paragraphs seven, eight and nine have had, or have the tendency to have, the following effects, among others:

(a) competition among anesthesiologists in the Rochester area has been lessened, limited, or restrained;

(b) fees for anesthesia services provided by some or all of respondents have been raised, fixed, or stabilized;

(c) the ability of third-party payors to compete in the Rochester area has been adversely affected; and

(d) subscribers to, policyholders of, enrollees in, or users of, plans offered by third-party payors have suffered either higher costs for anesthesia services provided by respondents, or higher premiums or costs for those plans.

11. Respondents' acts and practices, described above, constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. The violations, or the effects thereof, are continuing and will continue in the absence of the relief requested.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named below with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; 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 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter 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 comments filed thereafter by interested persons pursuant to Section 3.25 of its Rules, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. The following are the respondents' addresses:

(a) The address of respondents Jacob Krieger, M.D.; Mehdi-Mohtashemi, M.D.; Kariappa Narayan, M.D.; David A. Sherman, M.D.; and Tae B. Whang, M.D., is Rochester General Hospital, 1425 Portland Avenue, Rochester, New York.

(b) The address of respondent Stuart L. Kaplan, M.D., is 2966 Clover Street, Pittsford, New York.

(c) The address of respondents Marjanne H. Crino, M.D.; Theodore G. Ford, M.D.; Bridget A. Fraser, M.D.; Robert P. Geraci, M.D.; Manuel Gonzalez, M.D.; David Hwei-Yu Hsu, M.D.; Shirley D. Hunter, M.D.; Gary C. Kent, M.D.; Paul P. Marocco, M.D.; Naseer A. Tahir, M.D.; Michael M.H. Tan, M.D.; Richard C. Templeton, M.D.; and Balkrishna Venkatesh, M.D., is Genesee Hospital, 224 Alexander Street, Rochester, New York.

(d) The address of respondents Jose F. Calimlim, M.D.; Frank J. Colgan, M.D.; Svend Eldrup-Jorgensen, M.D.; Jim E. Fuller, M.D.; Robert M. Lawrence, M.D.; John A. Moreland, Jr., M.D.; Sriyalatha I. Nadaraja, M.D.; Seymour J. Sandler, M.D.; Pratima M. Shah, M.D.; and Jaimala Thanik, M.D., is Strong Memorial Hospital, 601 Elmwood Avenue, Rochester, New York.

(e) The address of respondent Judit S. Wagner, M.D., is Highland Hospital, 1000 South Avenue, Rochester, New York.

(f) The address of respondent Sylvia M. Marshall, M.D., is Lakeside Memorial Hospital, Inc., 156 West Avenue, Brockport, New York.

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

A. "*Blue Shield*" means Genesee Valley Medical Care, Inc., also known as Blue Shield of the Rochester Area.

B. "*Third-party payor*" means any person or entity that engages in any aspect of the process of reimbursing for, purchasing, or paying for health care services provided to any other person. Third-party payors include, but are not limited to, health insurance companies; prepaid hospital, medical or other health service plans, such as Blue Shield and Blue Cross plans; health maintenance organizations; preferred provider organizations; government health benefits programs; administrators of self-insured health benefits programs; and employers or other entities providing such self-insured health benefits programs.

C. "*Blue Shield's service area*" means Monroe, Livingston, Ontario, Seneca, Wayne, and Yates counties in New York State.

D. "*Competing anesthesiologist[s]*" as to any respondent means one or more anesthesiologist[s] practicing in the same geographic area as said respondent, for example Blue Shield's service area; but an anesthesiologist is not a "competing anesthesiologist" if he or she is a member of the same single entity or group practice as said respondent, for example the anesthesiologists who are employed by the University of Rochester's Strong Memorial Hospital.

E. "*Participating physician in Blue Shield*" and "*participate in Blue Shield*" includes both direct participation in Blue Shield and indirect participation through an employing hospital.

II.

It is further ordered, That each respondent shall forthwith cease and desist from, directly or indirectly,

A. Agreeing or combining, attempting to agree or combine, or taking any action in furtherance of any agreement or combination, with any competing anesthesiologist[s] to fix, stabilize, set, or tamper with (1) the amount or any term of reimbursement or payment from, or the price or any term of purchase by, any third-party payor for any anesthesiologist's services, or (2) any pricing formula, conversion factor, or fee for any anesthesiologist's services; *Provided, however,* That this paragraph shall not prohibit any agreement, combination, or concert-

ed action solely to provide information or views to any third-party payor concerning any issue, including reimbursement.

B. Agreeing or combining, attempting to agree or combine, or taking any action in furtherance of any agreement or combination, with any competing anesthesiologist[s] to (1) boycott, refuse to deal with, departicipate from, or not participate in, any health plan or program offered by any third-party payor, or (2) threaten to boycott, threaten to refuse to deal with, threaten to departicipate from, or threaten not to participate in, any health plan or program offered by any third-party payor, or (3) boycott or threaten to boycott any anesthesiologist on the basis of his or her participation in any health plan or program offered by any third-party payor.

III.

It is further ordered, That for a period of ten (10) years from the date this order becomes final each respondent shall forthwith cease and desist from, directly or indirectly,

A. Taking any action, individually or concertedly, to establish or implement a policy, practice, or work assignment schedule, on a rotational basis or otherwise, under which anesthesiologists are assigned to hospital patients in a manner intended to (1) limit, reduce, or suppress any anesthesiologist's incentive to participate in a third-party payor's health plan or program, or (2) prevent the accommodation of requests for an anesthesiologist who participates in a specific health plan or program offered by a third-party payor; *Provided, however,* That this paragraph shall not prohibit any respondent from taking any action, individually or concertedly, to establish or implement a policy, practice, or work assignment schedule, on a rotational basis or otherwise, that is no broader than reasonably necessary for the efficient provision of quality care, and is uniformly applied.

B. Taking any action, individually or concertedly, to deter, hinder, limit, or impede the obtaining of medical staff membership or clinical privileges by any anesthesiologist on the basis of his or her participation status in any plan or program offered by any third-party payor, or on the basis of the level of his or her fees.

IV.

It is further ordered, That for a period of five (5) years from the date this order becomes final, each respondent shall forthwith cease and desist from directly or indirectly entering into or continuing, or attempting to enter into or continue, any partnership or corporate

agreement that encompasses a majority of the anesthesiologists on the active medical staff at Rochester General Hospital or a majority of the anesthesiologists on the active medical staff at Genesee Hospital, and that has or would have the purpose or the effect of eliminating or restraining competition among anesthesiologists at either of those hospitals.

V.

It is further ordered, That:

A. During any period of time within seven (7) years after the date this order becomes final that any respondent is a member of the active medical staff of any hospital in Blue Shield's service area and is not a participating physician in Blue Shield, that respondent shall disclose clearly and conspicuously to patients and prospective patients, as soon as reasonably possible after the patient or prospective patient is referred to or contacts that respondent, or is scheduled to receive anesthesia from that respondent, whichever occurs first, the following written notice:

Notice to Blue Shield Subscribers

I do not participate in Blue Shield. You will be personally liable for my entire bill, and Blue Shield will reimburse you for only a portion of my bill. Most patients who are Blue Shield subscribers will personally have to pay more out-of-pocket if they use a non-participating anesthesiologist than if they use an anesthesiologist who participates in Blue Shield. If you wish to obtain the names of anesthesiologists at this or other hospitals who do participate in Blue Shield, contact Blue Shield, your surgeon, or the hospital's department of anesthesia.

[name]

Provided, however, That this notice need not be disclosed to patients who are known by the respondent not to be enrolled in or covered by any Blue Shield plan or program.

B. Paragraph V.A need not be complied with by a respondent during any portion of the seven (7) years after the date this order becomes final if, instead, during that period, the following notice is provided to patients and prospective patients who will be receiving anesthesia services at the hospital(s) in Blue Shield's service area where that respondent is a member of the active medical staff:

Notice to Blue Shield Subscribers

Most patients who are Blue Shield subscribers will personally have to pay more out-of-pocket if they use a non-participating anesthesiologist than if they use an anesthesiologist who participates in Blue Shield. If you wish to try to arrange for an anesthesiologist who participates in Blue Shield to provide your anesthesia, please contact your surgeon or the hospital's department of anesthesiology as soon as possible. The name and current Blue Shield participation status of each anesthesiologist who normally practices at this hospital is: [followed by a list specifying the names of all anesthesiologists on the hospital's active medical staff who participate in Blue Shield, and the names of all anesthesiologists on the hospital's active medical staff who do not participate in Blue Shield].

If provided, the above notice shall be provided to the patient or prospective patient before admission to the hospital if reasonably possible; otherwise it shall be provided as soon after admission as is reasonably possible.

Provided, however, That during any period of time that no anesthesiologist on the hospital's active medical staff participates in Blue Shield, the notice contained in this paragraph V.B shall read as follows:

Notice to Blue Shield Subscribers

The anesthesiologists who normally practice at this hospital do not participate in Blue Shield. You will be personally liable for the entire anesthesia bill, and Blue Shield will reimburse you for only a portion of the bill. Anesthesiologists who do participate have agreed to charge Blue Shield subscribers whose income does not exceed a specified level no more than a certain fee. If you wish to try to make special arrangements for treatment by an anesthesiologist who participates in Blue Shield, direct your inquiry to the hospital's anesthesia department, or your surgeon. If you wish to discuss the possibility of admission to a different hospital that has participating anesthesiologists, contact your surgeon.

VI.

It is further ordered, That:

A. Within thirty (30) days after this order becomes final, each respondent who does not participate in Blue Shield shall send the following notice to each physician who has surgical privileges at any

hospital(s) in Blue Shield's service area where that respondent is a member of the active medical staff:

Notice Regarding Blue Shield Subscribers

In helping your patients at _____ Hospital select an anesthesiologist, it may be useful for you to know that I do not participate in Blue Shield, and that I use a conversion factor of _____ in calculating my fee. Most patients who are Blue Shield subscribers will personally have to pay more out-of-pocket if they use a non-participating anesthesiologist, such as myself, than if they use an anesthesiologist who participates in Blue Shield.

[name]

B. Within thirty (30) days after this order becomes final, each respondent who does participate in Blue Shield shall send the following notice to each physician who has surgical privileges at any hospital(s) in Blue Shield's service area where that respondent is a member of the active medical staff:

Notice Regarding Blue Shield Subscribers

In helping your patients at _____ Hospital select an anesthesiologist, it may be useful for you to know that I participate in Blue Shield. Most patients who are Blue Shield subscribers will personally have to pay more out-of-pocket if they use a non-participating anesthesiologist than if they use an anesthesiologist who participates in Blue Shield.

[name]

C. For a period of seven (7) years from the date this order becomes final, each respondent shall send, within twenty (20) days of any change in his or her participation status with respect to Blue Shield or, if respondent does not participate in Blue Shield, any change in his or her conversion factor, an appropriately revised notice to each physician who has surgical privileges at any hospital(s) in Blue Shield's service area where that respondent is a member of the active medical staff.

D. For a period of seven (7) years from the date this order becomes final, on each anniversary of the date that this order becomes final, each respondent shall send the appropriate notice to each physician who has surgical privileges at any hospital(s) in Blue Shield's service area where that respondent is a member of the active medical staff.

E. Paragraphs VI.A, VI.B, VI.C, and VI.D need not be complied with by a respondent during any portion of the seven (7) years after the date this order becomes final if, instead, during that period, the following notice is sent to each physician with surgical privileges at the hospital(s) in Blue Shield's service area where that respondent is a member of the active medical staff:

Notice Regarding Blue Shield Subscribers

In helping your patients at _____ Hospital select an anesthesiologist, it may be useful for you to know which anesthesiologists participate in Blue Shield. Anesthesiologists who participate in Blue Shield have agreed to charge their patients who are Blue Shield subscribers, and whose income does not exceed a specified level, no more than a certain fee. Most patients who are Blue Shield subscribers will personally have to pay more out-of-pocket if they use a non-participating anesthesiologist than if they use an anesthesiologist who participates in Blue Shield. The name and current Blue Shield participation status of each anesthesiologist who normally practices at this hospital is: [followed by a list specifying the names of all anesthesiologists on the hospital's active medical staff who participate in Blue Shield, and the names of all anesthesiologists on the hospital's active medical staff who do not participate in Blue Shield].

If sent, the above notice shall be sent within thirty (30) days after the date this order becomes final. Thereafter, for a period of seven (7) years, the notice, with any revisions, shall be sent on each anniversary of the date that this order becomes final, and within sixty (60) days of any change in the participation status of any anesthesiologist who is a member of the active medical staff.

VII.

It is further ordered, That each respondent shall provide any patient, prospective patient, or physician who requests information from that respondent or respondent's agent regarding respondent's fees, prices, or participation status in any third-party payor's plan or program, with the requested information, including, when requested, respondent's fee or price, or the best estimate thereof, and an explanation of how respondent's fee or price will be determined, including the exact conversion factor that will be used, if one will be used.

VIII.

It is further ordered, That this order shall not prohibit any respondent from:

A. Participating in professional peer review of fees charged by individual physicians in individual cases; or

B. 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 administrative or judicial proceeding.

IX.

It is further ordered, That:

A. Within thirty (30) days after this order becomes final, respondent Robert P. Geraci shall provide a copy of this order and complaint to each anesthesiologist who is a member of the Genesee Hospital Department of Anesthesia and who is not a respondent in this matter, that respondent Jacob Krieger shall provide a copy of this order and complaint to each anesthesiologist who is a member of the Rochester General Hospital Department of Anesthesia and who is not a respondent in this matter, and that respondent Robert M. Lawrence shall provide a copy of this order and complaint to each anesthesiologist who is a member of the Strong Memorial Hospital Department of Anesthesia and who is not a respondent in the matter.

B. Sixty (60) days after this order becomes final, and at such other times as the Commission may by written notice require, each respondent shall submit in writing to the Federal Trade Commission a verified report setting forth in detail the manner and form in which he or she is complying, or has complied, with this order.

C. For a period of seven (7) years from the date this order becomes final, each respondent shall notify the Federal Trade Commission at least thirty (30) days prior to any change in his or her practice that may affect compliance with the obligations arising from this order.

Commissioners Bailey and Azcuenaga were recorded as voting in the negative.

DISSENTING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

I have voted not to accept the consent agreement in *Rochester Anesthesiologists*, Docket No. 9199, because it fails to contain a jurisdictional admission for some respondents. As required by Rule 2.32,

Paragraph 3 of the Agreement Containing Consent Order To Cease and Desist recites that "Respondents admit all of the jurisdictional facts set forth in the Commission's complaint in this proceeding." Paragraph 4, also in compliance with Rule 2.32, recites in part that the respondents waive "[a]ll rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement." Paragraph 3 of the agreement also states, however, that for purposes of any enforcement action, "respondents employed by the University of Rochester note their denial that the commission has jurisdiction over them in their capacity as employees of the University of Rochester." Most, if not all, of the respondents now employed by the University of Rochester were also so employed at the time of the alleged violation. With this language, the agreement is inconsistent on its face, and it does not settle the jurisdictional question, as Rule 2.32 plainly anticipates it should.

Although there may be a difference between admitting jurisdictional facts and admitting that those facts confer jurisdiction, Rule 2.32 plainly requires that a respondent entering into a consent agreement admit both. The purpose of a consent agreement is to settle the case, to resolve the issues that the parties would have litigated. The policy underlying Rule 2.32, which is unequivocal in requiring jurisdictional admissions in every case, is the necessity that the Commission assert jurisdiction only when it has jurisdiction. Any departure from the standard jurisdictional admission invites speculation as to the scope of the limitation and creates uncertainty about the Commission's authority to issue and enforce the order.

If jurisdiction is in question, the Commission should decide the issue now. If the Commission is uncertain of its jurisdiction, it should not impose an order by consent with a respondent any more than it would do so following litigation. If we are sure of our jurisdiction, as in this case, then we should not accept a qualified jurisdictional admission. It is the responsibility of the Commission, not the courts, to determine its jurisdiction in the first instance. See *FPC v. Louisiana Power & Light Co.*, 406 U.S. 621, 647 (1972); *American General Insurance Co. v. FTC*, 496 F.2d 197 (5th Cir. 1974). When we waver in asserting jurisdiction but still impose a law enforcement remedy, we abdicate our most fundamental responsibility.

I dissent.

IN THE MATTER OF

GREAT EARTH INTERNATIONAL, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SECS. 5
AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3223, Complaint, Mar. 15, 1988—Decision, Mar. 15, 1988*

This consent order prohibits, among other things, a Santa Ana, Calif.-based food supplements franchisor from making certain claims about the supplements' effectiveness. Respondent is also prohibited from using the name "Growth Hormone Releaser," "GHR," or any similar name unless it has substantiation that the product stimulates the body or pituitary gland to release significantly greater amounts of human growth hormone in users than in non-users.

Appearances

For the Commission: *Janice Frankle.*

For the respondent: *Michael Hart, Hart & Hart, Los Angeles, CA.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Great Earth International, Inc., a corporation, hereinafter referred to as respondent, has violated Sections 5 and 12 of the Federal Trade Commission Act, and that an action by it is in the public interest, issues this complaint and alleges that:

PARAGRAPH 1. Great Earth International, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 1801 Parkcourt Place, Suite A, Santa Ana, California.

PAR. 2. Respondent is, and has been engaged in the manufacture, labeling, packaging, offering for sale, promotion, sale and distribution to the public of various nutrient supplements, such as "GHR Formula-P.M.," "L-Arginine," "L-Ornithine," and other foods, as "food" is defined in the Federal Trade Commission Act, and other products.

PAR. 3. Respondent has caused to be prepared and placed for publication and has caused the dissemination of various advertising and promotional materials, including, but not limited to, the advertising and promotional materials attached hereto as Exhibits A through I, to promote the sale of its nutrient supplements and other foods and other products. As advertised, respondent's nutrient supplements are