

Complaint

110 F.T.C.

IN THE MATTER OF

MEDICAL STAFF OF DOCTORS' HOSPITAL OF PRINCE
GEORGE'S COUNTYCONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-3226. Complaint, April 14, 1988—Decision, April 14, 1988*

This consent order prohibits, among other things, the medical staff of a hospital in Prince George's County, Maryland from engaging in concerted, coercive conduct to prevent or impede a health maintenance organization or others from offering health care services.

Appearances

For the Commission: *Jane R. Seymour.*

For the respondent: *Richard C. Morgan and H. Robert Halper, O'Connor & Hannan, Washington, D.C.*

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 the Medical Staff of Doctors' Hospital of Prince George's County has violated the provisions of said Act, and it appearing that a proceeding by it would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Medical Staff of Doctors' Hospital of Prince George's County ("Medical Staff"), is an unincorporated association, organized and existing under the laws of the State of Maryland, and is located at Doctors' Hospital of Prince George's County ("Hospital") at 8118 Goodluck Road, Lanham, Maryland. The Medical Staff is composed of all physicians, dentists and podiatrists who have been granted privileges to treat patients at the Hospital.

PAR. 2. Most, if not all, members of the Medical Staff are engaged in the business of providing health care services for a fee. Except to the extent that competition has been restrained as herein alleged, most, if not all, members of the Medical Staff have been and are now in competition among themselves and with other health care providers in Prince George's County, Maryland. The Medical Staff's physi-

cian members constitute approximately half of the practicing physicians in Prince George's County.

PAR. 3. The Medical Staff engages in substantial activities for the economic benefit of its members. It is a "corporation" within the meaning of Section 4 of the Federal Trade Commission Act.

PAR. 4. The acts and practices herein alleged 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. By impeding the operations of the Health Plan, an interstate business, as alleged herein, respondent has affected commerce. In addition, members of the Medical Staff charge fees and collect payments that, in substantial part, are paid directly or indirectly with federal funds or funds received interstate from insurance companies, employers and other payers. The Medical Staff's members also purchase and use drugs, supplies and other health care equipment manufactured outside the State of Maryland. The flow of such funds and equipment is affected by the acts and practices of the Medical Staff and its members as herein alleged.

PAR. 5. The Hospital is a general, acute-care hospital with 250 beds. It is owned by American Medical International, Inc. ("AMI"). At the time of the acts and practices herein alleged, AMI was also the majority owner of the George Washington University Health Plan ("the Health Plan"), a health maintenance organization ("HMO"). At the time of the herein alleged acts and practices, the Health Plan, which had approximately 19,000 members, had offices only in Washington, D.C. Federal Government employees and their dependents constitute a substantial portion of the Health Plan's members.

PAR. 6. In October 1985, the Health Plan announced its plan to open an HMO facility in Prince George's County. This HMO facility was to be the Health Plan's first facility in Prince George's County, and the Health Plan intended to staff it with full-time faculty members of George Washington University. The Health Plan's purpose in opening this HMO site was to expand its operations from Washington, D.C., into Maryland in order to enhance its competitive position in the populous suburban areas around Washington, D.C.

PAR. 7. Beginning at least as early as November 1985, the Medical Staff, acting as a combination of its members or in conspiracy with at least some of its members, attempted to and did prevent, impede, or limit the operations of the Health Plan in Prince George's County. The principal purpose of the Medical Staff and its members in engaging in this combination or conspiracy was to protect Medical Staff members from competition. The specific competitive concerns of the members of the Medical Staff included the following:

A. Members engaged in primary care were concerned that they would lose both present and potential patients to the new Prince George's County HMO facility;

B. Members who are specialists were concerned that they would lose referrals to specialists connected with George Washington University; and

C. Members did not want the Hospital's owner, AMI, to compete with them through the Health Plan.

PAR. 8. In furtherance of this combination or conspiracy, the then-President of the Medical Staff appointed an Ad Hoc Task Force to meet with AMI officials. In meetings between the Ad Hoc Task Force and AMI officials and in other contacts with AMI officials and others, representatives of the Medical Staff threatened, coerced and pressured AMI not to open its planned HMO facility in Prince George's County. Representatives of the Medical Staff threatened that the Medical Staff would act collectively to prevent AMI from opening the planned HMO facility, and if AMI opened the facility the members of the Medical Staff would force the Hospital to close.

PAR. 9. As a result of the combination, conspiracy, acts and practices herein described, AMI and the Health Plan suspended their plans to open a new HMO facility in Prince George's County. However, AMI could not totally abandon its plans to operate an HMO in Prince George's County because it had made a commitment to the Federal Office of Personnel Management to provide a Health Plan facility located in Prince George's County for Federal employees from January 1, 1986, to December 31, 1986. AMI therefore entered into a temporary, one-year arrangement with certain members of the Medical Staff to treat the Health Plan patients in the members' private offices. In January of 1986, the Health Plan began operations in Prince George's County pursuant to the temporary arrangement. This arrangement, however, did not provide advantages that the planned HMO facility would have provided.

PAR. 10. At the end of 1986, AMI announced that it had sold its majority interest in the Health Plan back to George Washington University. The University opened the previously planned HMO facility in Prince George's County in March of 1987.

PAR. 11. The effects, tendency or capacity of the combination, conspiracy, acts and practices described in paragraphs six through eight are and have been to restrain trade unreasonably and hinder competition in the provision of health care services in Prince George's County and to deprive consumers of the benefits of competition in the following ways, among others:

A. Competition was restrained between physicians and the Health

Plan, and between the Health Plan and other prepaid health plans in Prince George's County;

B. The Health Plan's patients and other consumers were deprived of the benefits of competition, including certain benefits offered by the planned HMO facility; and

C. The Health Plan was restricted in its ability to serve consumers and compete in the provision of health care services.

PAR. 12. The combination, conspiracy, acts and practices herein described constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. Such combination, conspiracy, acts and practices, or the effects thereof, 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 respondent, Medical Staff of Doctors' Hospital of Prince George's County, and the respondent 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 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 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. Respondent, Medical Staff of Doctors' Hospital of Prince George's County, an unincorporated association organized and existing under the laws of the State of Maryland, has its principal place of business

at Doctors' Hospital of Prince George's County, 8118 Goodluck Road, Lanham, Maryland.

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

ORDER

I.

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

A. "*Medical Staff*" means the respondent Medical Staff of Doctors' Hospital of Prince George's County, its officers, agents, representatives, employees, committees, task forces, and its successors or assigns.

B. "*Corrective action*" means action taken pursuant to and in conformance with the Medical Staff's by-laws against any person with clinical privileges at Doctors' Hospital of Prince George's County 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 Doctors' Hospital of Prince George's County.

C. "*Integrated joint venture*" means a joint arrangement to provide pre-paid health care services in which physicians who would otherwise be competitors pool their capital to finance the venture, by themselves or together with others, and share substantial risk of adverse financial results caused by unexpectedly high utilization or costs of health care services.

II.

It is ordered, That the Medical Staff, directly, indirectly, or through any device, in connection with the provision of health care services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from organizing, facilitating, or acting in furtherance of any agreement or combination, either express or implied, among any physicians, to refuse, or threaten to refuse, to deal with, or otherwise coerce, any person or entity for the purpose or with the effect of preventing or restricting the offering or delivery of health care services by any health maintenance organization, hospital or other health care facility.

III.

A. *It is provided*, That this order shall not be construed to prohibit the Medical Staff or its members from engaging, pursuant to the Medical Staff's by-laws, in credentialing, corrective action, utilization review, quality assurance, peer review, or hospital policy-making at Doctors' Hospital of Prince George's County, where such conduct by the Medical Staff neither constitutes nor is part of any agreement, combination, or conspiracy the purpose or effect of which is to impede unreasonably the development or operation of any health maintenance organization, hospital or other health care facility.

B. *It is further provided*, That this order shall not be construed to prohibit the Medical Staff from facilitating the formation of an integrated joint venture that refuses to deal with any person or entity, as long as the physicians participating in the joint venture remain free to deal with any third-party payer other than through the joint venture.

IV.

A. *It is further ordered*, That within thirty (30) days after service of this order, the Medical Staff shall mail a copy of this order and the accompanying complaint to the Executive Director of Doctors' Hospital of Prince George's County, to the President of the George Washington University Health Plan, and to each of the Medical Staff's members.

B. *It is further ordered*, That the Medical Staff 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 Medical Staff has complied and is complying with this order.

C. *It is further ordered*, That the Medical Staff shall promptly notify the Commission of any change in the Medical Staff's business address or of any proposed change in its organization that may affect compliance obligations arising out of this order.

Commissioner Bailey not participating.

IN THE MATTER OF

MULTIPLE LISTING SERVICE MID COUNTY, INC.

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

Docket C-3227. Complaint, April 20, 1988—Decision, April 20, 1988

This consent order prohibits, among other things, a Brooklyn, N.Y. real estate firm from participating in various practices that have allegedly restrained price and service competition among residential real estate brokers. Respondent is prohibited from: requiring that any applicant or member operate a full time office; fixing, maintaining or recommending any division of commission between selling and listing brokers; adopting any policy that has the purpose or effect of exclusive agency listings; requiring any member to inform Mid County or any of its members of the commission agreed to between any listing broker and homeowner; and adopting any policy having the purpose or effect of delaying the solicitation of a listing agreement.

Appearances

For the Commission: *Michael J. Bloom* and *Alfred J. Ferrogari*.

For the respondent: *Bruce H. Schneider, Stroock, Stroock, & Lavan*, New York City.

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 respondent Multiple Listing Service Mid County Inc. ("Mid County"), a corporation, has violated and is violating 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 this complaint stating its charges as follows:

PARAGRAPH 1. As used in this complaint:

(1) "*Multiple listing service*" shall mean a clearinghouse through which member real estate brokerage firms regularly and systematically exchange information on listings of real estate properties and share commissions with other members.

(2) "*Broker*" shall mean any person, firm, or corporation that, for another and for a fee or commission, lists for sale, sells, exchanges, or