

IN THE MATTER OF
PATRICK S. O'HALLORAN, M.D., ET AL.

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

Docket C-3232. Complaint, Aug. 26, 1988—Decision, Aug. 26, 1988

This consent order prohibits, among other things, Patrick S. O'Halloran, M.D., a Rhode Island obstetrician, from dealing with any government health care program on collectively determined terms or from collectively refusing to deal with any government health care program.

Appearances

For the Commission: *L. Barry Costilo.*

For the respondent: *Donato Andre D'Andrea, Newport, R.I.*

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, Dr. Patrick S. O'Halloran, Dr. Donald A. Guadagnoli, Dr. Nasser Chahmirzadi, Dr. Douglas G. Wilson and Dr. James C. Gedney ("respondents"), have 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 in that respect as follows:

PARAGRAPH 1. The respondents are physicians practicing on Aquidneck Island, Rhode Island. They are engaged in the business of providing obstetrical services to patients for a fee.

PAR. 2. Respondents constitute all of the physicians who practice obstetrics on Aquidneck Island, and are the only source of obstetrical services on the Island. Residents of Aquidneck Island who are eligible for Medicaid rarely leave the Island to obtain obstetrical services.

PAR. 3. Except to the extent that competition has been restrained as alleged herein, respondents have been and are now in competition among themselves.

PAR. 4. Respondents' general business practices and 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. Respondents purchase and use drugs, supplies and equipment manufactured outside of Rhode Island, and collect payments that, in substantial part, are paid directly or indirectly from funds that flow interstate from insurance companies, employers and other payers. Respondents also receive Medicaid payments, which are paid in part by federal funds that flow across state lines. The flow of all or part of these funds, and in particular Medicaid payments, is affected by the acts and practices of the respondents as herein alleged.

PAR. 5. In approximately November and December of 1986, respondents met on several occasions to discuss their dissatisfaction with the level of Medicaid payments for the delivery of obstetrical services and desire for higher Medicaid payments, and entered into a combination or conspiracy to force the State to raise the level of Medicaid payments for obstetrical services.

PAR. 6. In furtherance of the above combination or conspiracy, respondents, among other things, threatened the State with a boycott if it did not increase its Medicaid payments to obstetricians.

A. In a letter to the Governor of Rhode Island dated January 5, 1987, respondents O'Halloran, Chahmirzadi and Guadagnoli stated that unless prompt action was taken they would no longer accept new obstetrical Medicaid patients after February 15, 1987. They stated that their action meant "there will be little, if any, obstetrical care on Aquidneck Island for Medicaid patients," and they noted their understanding that the other two obstetricians on the Island were considering similar action.

B. In a letter to the Governor sent four days later, respondents Gedney and Wilson referred to the February 15 deadline set by the other three obstetricians and stated that they, too, would not accept new Medicaid patients.

PAR. 7. As a result of the combination, conspiracy, acts and practices herein described, the State announced, four days before the February 15, 1987, deadline set by respondents, that effective April 1, 1987, the Medicaid payment level for the package of services provided in a routine obstetrical delivery would be more than doubled.

PAR. 8. The purpose, effects, tendency or capacity of the acts and practices described in paragraphs five and six are and have been to restrain trade unreasonably and hinder competition in the provision of

obstetrical services on Aquidneck Island, and to deprive consumers of the benefits of competition in the following ways, among others:

A. By restraining competition among obstetricians on Aquidneck Island.

B. By fixing or increasing the prices that obstetricians on Aquidneck Island charged for providing obstetrical services to Medicaid patients.

C. By depriving the State of Rhode Island and the Medicaid-eligible people on Aquidneck Island of the benefits of competition among the obstetricians on Aquidneck Island.

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

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of respondent, Patrick S. O'Halloran, M.D., 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 and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 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, 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 Patrick S. O'Halloran, M.D., is a physician licensed and doing business under and by virtue of the laws of the State of Rhode Island. Respondent's mailing address is 484 Broadway, Newport, Rhode Island.

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:

"*Respondent*" means Patrick S. O'Halloran, M.D., his employees, agents and representatives.

"*Governmental health care program*" means any governmental program that reimburses for, purchases, or pays for health care services provided to any person.

"*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 respondent, directly, indirectly or through any device, in connection with the provision of medical services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from agreeing, attempting or threatening to agree, or continuing any agreement or understanding, either express or implied, with any physician (1) to deal with any governmental health care program on collectively determined terms, or (2) to refuse or threaten to refuse to deal with, or otherwise coerce, any governmental health care program.

Provided, That nothing in this order shall prohibit respondent from:

- (1) entering into any agreement with any physician with whom respondent practices medicine in partnership or in a professional corporation, or who is employed by the same person as respondent; or
- (2) entering into any agreement with any physician as a participant in an integrated joint venture, as long as the physician participants in the joint venture remain free to deal with any governmental health care program other than through the joint venture.

III.

A. *It is further ordered*, That within thirty (30) days after service of this order, respondent shall mail a copy of this order and the accompanying complaint to the Governor of the State of Rhode Island and to the President of Newport Hospital.

B. *It is further ordered*, That 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 from in which he has complied and is complying with this order.

C. *It is further ordered*, That respondent shall promptly notify the Commission of any change in his business address.

CONCURRING STATEMENT OF CHAIRMAN DANIEL OLIVER

I have voted for final acceptance of the consent order in this matter. However, I would have preferred an order that included a provision for automatic termination after ten years. In my view, an antitrust conduct order should be preserved only so long as its benefits outweigh its costs. Maintaining an order such as this in perpetuity is not ordinarily appropriate. Its procompetitive remedial benefits can be expected to decline over time, and it may also begin to have adverse effects on certain procompetitive practices.

With respect to orders in merger cases, the Commission has already concluded that "order provisions requiring prior Commission approval of future acquisitions generally should not have terms exceeding ten years."¹ The Commission determined that such provisions will in most

¹ *Hercules, Inc.*, 100 FTC 531 (1982) (modifying order); see also, e.g., *MidCon Corp.*, 107 FTC 48, 58 (1986) (consent order) (ten years); *Hospital Corp. of America*, 106 FTC 361, 524 (1985) (ten years), *aff'd*,
(footnote cont'd)

cases have served their remedial purposes after ten years, and "the findings upon which such provisions are based should not be presumed to continue to exist for a longer period of time."² For similar reasons, I believe that the consent order at issue here should automatically terminate after ten years.

807 F.2d 1381 (7th Cir. 1986), *cert. denied*, 107 S.Ct. 1975 (1987); *Columbian Enterprises, Inc.*, 106 FTC 551, 554 (1985) (consent order) (five years).

² *Hercules, Inc.*, 100 FTC at 531.

IN THE MATTER OF
DONALD A. GUADAGNOLI, M.D.

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

Docket C-3234. Complaint, Aug. 26, 1988—Decision, Aug. 26, 1988*

This consent order prohibits, among other things, Donald A. Guadagnoli, M.D., a Rhode Island obstetrician, from dealing with any government health care program on collectively determined terms or from collectively refusing to deal with any government health care program.

Appearances

For the Commission: *L. Barry Costilo.*

For the respondent: *Michael Hagopian, Gelfuslo & Lochut,*
Cranston, R.I.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of respondent, Donald A. Guadagnoli, M.D., 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 and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 respondent has violated the said Act, and that complaint should issue stating its

*Complaint previously published at 111 FTC 35 (1988).