

IN THE MATTER OF

DOUGLAS G. WILSON, M.D.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3237. Complaint,* Aug. 26, 1988—Decision, Aug. 26, 1988*

This consent order prohibits, among other things, Douglas G. Wilson, 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: *William R. Landry*, Providence, R.I.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of respondent, Douglas G. Wilson, 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

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

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 Douglas G. Wilson, 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 Aquidneck Medical Center, Memorial Boulevard, 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 Douglas G. Wilson, 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 form 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 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.

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*, 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

ROBERT E. HARVEY, M.D., P.A., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3239. Complaint, Aug. 26, 1988—Decision, Aug. 26, 1988*

This consent order prohibits, among other things, a group of Victoria, Tx. allergists from impeding the use of any allergy testing product by any physician, clinic, hospital, ambulatory care center or other health facility in order to restrict competition from physicians who are not allergists. Respondents are also prohibited from boycotting the manufacturers that produce allergy testing devices used by physicians who are not allergy specialists.

Appearances

For the Commission: *Erika R. Wodinsky.*

For the respondents: *R. Owen Ricker, Jr., Woody, Gumm, Villafranca, Villafranca & Ricker, Victoria, Tx.*

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 Robert E. Harvey, M.D., a professional association, doing business as Victoria Allergy and Asthma Clinic ("Harvey, P.A."), and Robert E. Harvey, M.D. ("Harvey") and Gullapali K. Rao, M.D. ("Rao"), individually, herein-after sometimes referred to as 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. Respondents Harvey and Rao are physicians licensed by the State of Texas who devote a substantial portion of their practice to the diagnosis and treatment of allergic disease. Respondent Harvey directs and controls the business practices of Harvey, P.A., which does business under the name Victoria Allergy and Asthma Clinic. The principal place of business of each of the respondents is located at 3901 North Navarro, Victoria, Texas.