

IN THE MATTER OF

BELAGE PLASTIC SURGERY CENTER, P.C., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3401. Complaint, Sept. 8, 1992--Decision, Sept. 8, 1992*

This consent order prohibits, among other things, a Virginia-based plastic surgery center and its founder from misrepresenting the likelihood of risks or scarring, the length of the recovery period, the amount of pain, or the need for pain medication, following plastic or cosmetic surgery. In addition, the order requires a risk disclosure any time the respondents state that cosmetic or plastic surgery procedures are safe.

Appearances

For the Commission: *Michael C. McCarey* and *Renate Kinscheck*.

For the respondents: *Lewis Rose* and *Michael Eaton*, *Arent, Fox, Kintner, Plotkin & Kahn*, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that BelAge Plastic Surgery Center, P.C., a corporation, (hereinafter "BelAge") and George F. Miller, Jr., M.D., individually, and as an officer of BelAge ("respondents") have violated the provisions 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, alleges:

PARAGRAPH 1. (a) Respondent BelAge Plastic Surgery Center, P.C., is a Virginia corporation. Its offices and principal place of business are at 4900 Seminary Road, Alexandria, VA. (b) Respondent George F. Miller, Jr., M.D., is an individual medical doctor who founded BelAge, and is an officer and director of the corporate respondent. He directs, controls, and formulates the acts

and practices of the corporate respondent, including the acts and practices alleged in this complaint. Dr. Miller's business address is 4900 Seminary Road, Alexandria, VA. (c) The aforementioned respondents cooperate and act together in carrying out the acts and practices alleged in this complaint.

PAR. 2. Respondents advertise, offer for sale, and sell and provide surgery services to the public and have done so at all times material to this complaint. Dr. Miller is an otolaryngologist, specializing in head and neck surgery and facial plastic surgery. Dr. Miller, through BelAge, associates with other doctors who are trained to perform plastic surgery of other parts of the body. In the spring of 1989, respondents, along with other plastic surgeons, were offered a preexisting cosmetic surgery marketing campaign which included suggested broadcast and newspaper advertisements and a brochure entitled "Everything You've Always Wanted To Know About Plastic Surgery." Respondents purchased the campaign and, after some modifications, disseminated the brochure (hereinafter "brochure").

PAR. 3. The acts and practices of respondents alleged in this complaint are and have been in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

COUNT I.

PAR. 4. The brochure contains the statement that breast lift surgery "leaves minimal, barely visible scars." (p. 14).

PAR. 5. By and through the use of the statement referred to in the preceding paragraph, respondents falsely represent, and have represented, directly or by implication, that breast lift surgery is unlikely to result in permanent and conspicuous scars.

PAR. 6. In truth and in fact, breast lift surgery is likely to result in permanent and conspicuous scars.

COUNT II.

PAR. 7. The brochure contains the following statements:

(a) "recovery [following face lift operations] is surprisingly quick and usually pain-free. There is some bruising, stitches, and bandages you'll have to put up with but

it doesn't take long. Some patients are back to their normal schedules within a week looking younger and feeling younger too." (p. 6).

(b) "after an easy week of recovery [after breast reduction surgery] . . . you can be back at work." (p. 14).

PAR. 8. By and through the use of the statements referred to in the preceding paragraph, respondents falsely represent, and have represented, directly, or by implication, that the recovery period following face lift and breast reduction is likely to be very short.

PAR. 9. In truth and in fact, the recovery period following face lift and breast reduction is not likely to be very short.

COUNT III.

PAR. 10. The brochure contains the statement that if a patient has "an oversized, protruding chin surgery of the chin can correct it quickly, easily and permanently." (p. 9).

PAR. 11. By and through the use of the statement referred to in the preceding paragraph, respondents falsely represent, and have represented, directly, or by implication, that a protruding chin or jaw can usually be corrected through surgery which involves a very short recovery time.

PAR. 12. In truth and in fact, a protruding chin or jaw can not usually be corrected through surgery which involves a very short recovery time.

COUNT IV.

PAR. 13. The brochure contains the following statements:

(a) "Recovery [following surgery to correct protruding ears] is . . . painless. Many patients require no pain medication . . . (p. 9).

(b) "And post-op discomfort [following breast augmentation] is so mild it can usually be handled with Tylenol." (p. 14).

(c) "... an easy week of recovery (usually Tylenol is all that's needed for post-op discomfort) [following breast reduction]." (p. 14).

PAR. 14. By and through the use of the statements referred to in the preceding paragraph, respondents falsely represent, and have

represented, directly, or by implication, that, following otoplasty (surgery to correct protruding ears), breast augmentation and breast reduction, most patients will experience no pain or only mild discomfort, and are not likely to require narcotic pain medication to relieve pain.

PAR. 15. In truth and in fact, following otoplasty (surgery to correct protruding ears), breast augmentation and breast reduction, most patients are unlikely to experience no pain or only mild discomfort, and are likely to require narcotic pain medication to relieve pain.

COUNT V.

PAR. 16. By and through the use of the statement that "[n]or do implants interfere with mammography...." (p. 13), respondents falsely represent, and have represented, directly or by implication, that silicone breast implants do not interfere with mammography.

PAR. 17. In truth and in fact, silicone breast implants can interfere with mammography.

COUNT VI.

PAR. 18. By and through the combined use of numerous statements in the brochure referring to the safety of various plastic surgery operations, including, but not limited to, statements that "[today's plastic surgery has gotten so safe..." (p. 4), "[today's breast reduction procedures are safe..." (p. 14), and "... anyone's breasts can be easily and safely changed in almost any manner" (p. 12), respondents represent, and have represented, directly, or by implication, that plastic surgery is safe. Respondents have failed to disclose that such surgery entails serious adverse risks. In light of respondents representations that such surgery is safe, such failure to disclose is a deceptive practice.

PAR. 19. By and through the aforesaid acts and practices, respondents engage, and have engaged, in unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

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 complaint, which the Bureau of Consumer Protection 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 a 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 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 BelAge Plastic Surgery Center, P.C., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its office and principal place of business at 4900 Seminary Road, Alexandria, Virginia.

2. Respondent George F. Miller, Jr., M.D., is an individual medical doctor who founded BelAge Plastic Surgery Center, P.C., and is an officer and director of the corporate respondent. He directs, controls and formulates the acts and practices of BelAge Plastic Surgery Center, including the acts and practices alleged in the complaint herein. His business address is 4900 Seminary Road, Alexandria, Virginia.

3. 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

DEFINITIONS

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

1. "*Advertising, offering for sale or promotion*" does not include any statement made by respondents or their representatives, agents or employees to a patient after the patient has agreed to purchase the procedure represented.

2. "*Recovery period*" means the period between when a typical patient of respondents has had the surgery represented and when such patient actually returns to a normal schedule, including social activities and full-time employment, but excluding strenuous exercise.

3. In order for a disclosure to be made "*prominently*" it must be in the same typeface and color contrast as the representation which triggers the disclosure.

4. "*Typical*" or "*typically*" means in the majority of instances or the majority of patients.

I.

It is ordered, That respondents BelAge Plastic Surgery Center, P.C., a Virginia corporation, its successors and assigns, and its officers, and George F. Miller, Jr., M.D., individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale or promotion of any cosmetic or plastic surgical procedure, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or by implication:

A. Representing that the results from any cosmetic or plastic surgical procedure can be achieved easily, simply or quickly or that the recovery period following any surgical procedure is quick, easy, or simple, when the recovery period is likely to be more than five days, unless the length of the recovery period is clearly and prominently disclosed in close proximity to such representation.

B. Making any representation as to when patients can resume a normal schedule or return to work or making any other representation regarding recovery experience, which does not describe the recovery experience of a typical patient of respondents, unless one of the following is clearly and conspicuously disclosed in close proximity to such representation: (1) the recovery experience of a typical patient of respondents, or (2) that patients will experience the represented recovery experience only under limited or atypical circumstances.

C. Representing that following breast augmentation, breast reduction, or any other cosmetic or plastic surgical procedure for which patients typically take narcotic pain medications during the post-operative period, patients are likely to experience no pain, or only mild discomfort, or are unlikely to require narcotic pain medication; provided, however, that this paragraph shall not apply if respondents can demonstrate that their patients typically do not take narcotic pain medication during the post-operative period for the procedure in question;

D. Representing that any cosmetic or plastic surgery procedure which entails serious adverse risks is safe unless respondents clearly and prominently disclose that such procedure entails adverse risks. For purposes of this order, the following disclosure shall be deemed adequate to satisfy this disclosure requirement:

Of course, plastic surgery, like any surgery, has risks. Your surgeon will discuss the risks with you in detail.

The disclosure required by this paragraph shall be made either (1) in close proximity to such representation or (2) in the case of a written representation, on the same page as the representation, in which case the disclosure must be boxed and isolated from all other material, and be in the same typeface and color contrast as the largest and most noticeable representation on that page which triggers the disclosure.

E. Misrepresenting the likelihood of serious adverse risks associated with any plastic or cosmetic surgical procedure or device implanted through any such procedure;

F. Misrepresenting the likelihood of permanent, extensive or conspicuous scars resulting from breast reduction, breast lift or abdominoplasty, or any other cosmetic or plastic surgical procedure which typically results in permanent and conspicuous scars;

G. Misrepresenting the length of the recovery period following any cosmetic or plastic surgical procedure; *provided, however*, that nothing in this order shall prevent respondents from making any truthful representation as to when a typical patient of respondents returns to work;

H. Representing, contrary to fact, that little or no pain or discomfort is typically experienced as a result of undergoing any cosmetic or plastic surgical procedure;

I. Misrepresenting the need for pain medication or the type of pain medication that is likely to be needed to relieve pain following any cosmetic or plastic surgical procedure; *provided however*, that nothing in this order shall prevent respondents from making any truthful representation regarding the pain medication taken by a typical patient of respondents.

II.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, the filing of a bankruptcy petition, or any other change in the corporation(s) which may affect compliance obligations arising out of the order.

III.

It is further ordered, That respondents and their successors or assigns, shall distribute a copy of this order to each of their officers, agents, representatives, independent contractors and employees who are engaged in the preparation and placement of advertisements or

promotional materials, who communicate with patients or potential patients, who perform surgical services or who have any responsibilities with respect to the subject matter of this order.

IV.

It is further ordered, That, for a period of ten years from the date of entry of this order, the individual respondent named herein shall promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment, with each such notice to include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment.

V.

It is further ordered, That respondents shall maintain for a period of three years from the date the document is created or used, whichever is later, documents demonstrating the manner and form of respondents' compliance with this order. *It is further ordered,* That such documents shall be made available to the Commission or its staff for inspection and copying within thirty (30) days of receipt of a request for an inspection.

VI.

It is further ordered, That respondents and their successors or assigns, shall, within sixty (60) days after service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

UNIVERSITY HEALTH, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED
VIOLATION OF SEC. 7 OF THE CLAYTON ACT

Docket 9246. Complaint, April 2, 1991--Decision, Sept. 9, 1992

This consent order prohibits, among other things, a non-profit corporation and two of its subsidiaries, for ten years, from acquiring St. Joseph Hospital or any other hospital in the Augusta, Georgia area -- and from consolidating the operations of respondents' University Hospital with those of St. Joseph or any other local general hospital -- without prior FTC approval.

Appearances

For the Commission: *Mark J. Horoschak* and *Oscar M. Voss*.

For the respondents: *Robert McCann* and *William G. Kopit*,
Epstein, Becker & Green, Washington, D.C.

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that the respondents, University Health, Inc., University Health Services, Inc., and University Health Resources, Inc., corporations subject to the jurisdiction of the Commission, have agreed to acquire St. Joseph Hospital (Augusta, Georgia) and related assets and other interests from Health Care Corp. of the Sisters of St. Joseph of Carondelet; that such acquisition, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18; and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11 of the Clayton Act, 15 U.S.C. 21, stating its charges as follows: