

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:

I. THE RESPONDENTS

1. Respondent University Health, Inc. ("UHI") is a non-profit corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business at 1350 Walton Way, Augusta, Georgia. UHI is governed by a board of trustees. UHI's board of trustees is substantially self-perpetuating, in that the board controls the designation of a majority of all new UHI trustees.

2. Respondent University Health Services, Inc. ("UHS") is a non-profit corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business at 1350 Walton Way, Augusta, Georgia. UHS is governed by a board of trustees. UHI controls the designation of a majority of all new UHS trustees, and thereby controls UHS.

3. Respondent University Health Resources, Inc. ("UHR") is a for-profit corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business at 810 13th Street, Augusta, Georgia. UHS is the sole shareholder of UHR.

4. UHI, UHS, and UHR (hereinafter referred to collectively as "respondents") are primarily engaged in the operation and management of health care facilities in the Augusta, Georgia area, including but not limited to 690-bed University Hospital in Augusta ("University Hospital"), which is operated by UHS. In its fiscal year ending December 30, 1990, University Hospital reported approximately \$155 million in sales, and total profits of over \$12 million.

5. Health Care Corp. of the Sisters of St. Joseph of Carondelet ("HCC"), a Missouri non-profit corporation, operates approximately 12 hospitals in various regions of the United States. HCC holds the right to designate a majority of the directors of St. Joseph Center for Life, Inc. ("SJCFL"), which in turn controls St. Joseph Hospital, Augusta, Georgia, Inc., the owner and operator of 236-bed St. Joseph Hospital in Augusta, Georgia ("St. Joseph Hospital"). In its fiscal year ending June 30, 1990, St. Joseph Hospital earned approximately \$4 million on over \$51 million in sales.

II. JURISDICTION

6. At all times relevant herein, respondents, and HCC and St. Joseph Hospital, have been and are now engaging in or affecting commerce as the term "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12.

7. Respondents are persons subject to the jurisdiction of the Commission pursuant to Section 11 of the Clayton Act, as amended, 15 U.S.C. 21.

III. THE PROPOSED ACQUISITION

8. Pursuant to an acquisition agreement signed January 21, 1991, respondents agreed to acquire St. Joseph Hospital and related interests and other assets from HCC and its affiliated corporations. Among these interests are the rights held by HCC and its parent religious order to designate directors of SJCFL, which rights if acquired by respondents would give respondents control of SJCFL and indirect control over the assets of St. Joseph Hospital. Also among the interests subject to the acquisition agreement are a general partnership interest in a medical office building under construction next to St. Joseph Hospital, which UHR has agreed to acquire from an affiliate of HCC. The value of the assets and interests to be acquired by respondents pursuant to the agreement is in excess of \$38 million.

IV. NATURE OF TRADE AND COMMERCE

9. For purposes of this complaint, the relevant line of commerce is the production and sale of general acute care hospital services (excluding services provided by psychiatric hospitals, rehabilitation hospitals, and Federally-owned facilities) and/or any narrower group of services contained therein. General acute care hospital services are services provided by health facilities that provide 24-hour inpatient care in connection with services of physicians for conditions for which nursing, medical or surgical services would be appropriate for care, diagnosis, or treatment, other than services provided by

facilities that are specially intended for treatment of mental illness, emotional disturbance or substance abuse.

10. For purposes of this complaint, the relevant section of the country is the Augusta, Georgia area, including Richmond County, Georgia, Columbia County, Georgia, and Aiken County, South Carolina, and/or any narrower area contained therein.

V. MARKET STRUCTURE

11. The relevant market -- the production and sale of general acute care hospital services in the Augusta, Georgia area -- is highly concentrated whether measured by the Herfindahl-Hirschmann Index ("HHI") or by four-firm concentration ratios.

VI. ENTRY CONDITIONS

12. Entry into the relevant market is difficult due to certificate-of-need regulation of entry by the Georgia and South Carolina state governments, substantial lead times required to establish a new hospital, and other factors.

VII. ACTUAL AND POTENTIAL COMPETITION

13. University Hospital and St. Joseph Hospital are actual and potential competitors in the production and sale of general acute care hospital services in the Augusta, Georgia area.

VIII. EFFECTS

14. The effects of the aforesaid acquisition, if consummated, may be substantially to lessen competition in the relevant market in the following ways, among others:

(a) It would eliminate actual and potential competition between St. Joseph Hospital and University Hospital, and between St. Joseph Hospital and others;

(b) It would significantly increase the already high levels of concentration;

(c) It would create a firm whose market share is so high as to lead to dominant firm status;

(d) It would eliminate St. Joseph Hospital as a substantial independent competitive force;

(e) It may enhance the possibility of collusion or interdependent coordination by the remaining firms; and

(f) It may deny patients, physicians, and purchasers of health care coverage the benefits of free and open competition based on price, quality, and service.

15. All of the above increase the likelihood that firms producing and selling general acute care hospital services in the Augusta area will increase prices and restrict output, both in the near future and in the long term.

IX. VIOLATION CHARGED

16. The proposed acquisition of St. Joseph Hospital and related assets and interests by respondents would, if consummated, violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

Commissioner Owen dissenting.

DECISION AND ORDER

The Federal Trade Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 7 of the Clayton 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 Federal Trade Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all of the jurisdictional facts set forth in the aforesaid 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 would have been violated by their proposed acquisition 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(b) 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, now in further conformity with the procedures prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent University Health, Inc. is a non-profit corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business at 1350 Walton Way, Augusta, Georgia. Respondent University Health Services, Inc. is a non-profit corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business at 1350 Walton Way, Augusta, Georgia. Respondent University Health Resources, Inc. is a for-profit corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business at 810 13th Street, Augusta, Georgia.

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

A. "*University*" means University Health, Inc., University Health Services, Inc., and University Health Resources, Inc., and their directors, trustees, officers, employees, representatives, agents, parents, subsidiaries, affiliates, divisions, successors, and assigns.

B. "*Hospital*" means a health facility, other than a federally owned facility, having a duly organized governing body with overall administrative and professional responsibility, and an organized medical staff, that provides 24-hour inpatient care, as well as outpatient services, and having as a primary function the provision of inpatient services for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities. For purposes of this order, retirement communities (*e.g.*, the Brandon Wilde facility operated by Augusta Resource Center on Aging, Inc.), or health facilities whose inpatient services are limited to rehabilitation care (*e.g.*, Walton Rehabilitation Hospital in Augusta, Georgia), mental health care, or substance abuse care, are not "hospitals."

C. To "*acquire a hospital*" means to directly or indirectly acquire the whole or any part of the assets of a hospital; acquire the whole or any part of the stock or share capital of, the right to designate directly or indirectly directors or trustees of, or any equity or other interest in, any person which operates a hospital; or enter into any other arrangement to obtain direct or indirect ownership, management or control of a hospital or any part thereof, including but not limited to a lease of or management contract for a hospital.

D. To "*operate a hospital*" means to own, lease, manage, or otherwise control or direct the operations of a hospital, directly or indirectly.

E. "*Affiliate*" means any entity whose management and policies are controlled or directed in any way, directly or indirectly, by the person with which it is affiliated.

F. "*Person*" means any natural person, partnership, corporation, company, association, trust, joint venture or other business or legal entity, including any governmental agency.

G. The "*Augusta area*" means the area consisting of Richmond and Columbia Counties in Georgia, and Aiken County, South Carolina.

H. The "*Commission*" means the Federal Trade Commission.

II.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, University shall not, without the prior approval of the Commission:

- A. Acquire any hospital in the Augusta area; or
- B. Permit any hospital it operates in the Augusta area to be acquired by any person that operates, or is in the process of acquiring, any other hospital in the Augusta area.

Provided, however, That such prior approval shall not be required for:

- (a) The establishment of a new hospital service or facility (other than as a replacement for a hospital service or facility not operated by University, pursuant to an agreement or understanding between University and the person operating the replaced service or facility),
- (b) Any transaction exempt from the requirements of paragraph III of this order by operation of subpart (b) of the proviso to that paragraph III; or
- (c) Any transaction subject to this paragraph II of this order if the fair market value of (or, in case of a purchase acquisition, the consideration to be paid for) the hospital, part thereof or interest therein to be acquired does not exceed one million dollars (\$1,000,000).

III.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, University shall not, without providing advance notification to the Commission, enter into any joint venture or other arrangement with any other hospital in the Augusta area for the joint establishment or operation of any new hospital, hospital medical or surgical diagnostic or treatment service or facility, or part thereof in the Augusta area. Such advance notification shall be required upon University's issuance of a letter of intent for, or

execution of an agreement to enter into, such a transaction, whichever is earlier.

No notification shall be required by this paragraph III of this order for any transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a, or for which prior approval by the Commission is required, and has been requested, pursuant to paragraph II of this order.

The notification required by this paragraph III of this order shall be made according to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended, and shall be prepared and transmitted in accordance with the requirements of that part, except that notification need not be transmitted to the United States Department of Justice. The notification required by this paragraph III of this order shall apply to University and shall not apply to any other party to the transaction. If the transaction for which notification is required by this paragraph III of this order requires state regulatory approval under a health facilities certificate of need law, University may, in lieu of the foregoing notification, submit to the Commission a copy of the application for such state approval.

Provided, however, That no transaction shall be subject to this paragraph III of this order if:

(a) The fair market value of the assets to be contributed to the joint venture or other arrangement by hospitals not operated by University does not exceed one million dollars (\$1,000,000); or

(b) The service, facility or part thereof to be established or operated is to engage in no activities other than the provision of the following services: laundry; data processing; purchasing; materials management; billing and collection; dietary; industrial engineering; maintenance; printing; security; records management; laboratory testing; personnel education, testing, or training; or health care financing (such as through a health maintenance organization or preferred provider organization).

IV.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, University shall not permit all or any substantial part of any hospital it operates in the Augusta area to be acquired by any other person unless the acquiring person files with the Commission, prior to the closing of the acquisition, a written agreement to be bound by the provisions of this order, which agreement University shall require as a condition precedent to the acquisition.

V.

It is further ordered, That University shall, one year after the date this order becomes final and annually for nine (9) years thereafter, file with the Commission a verified written report setting forth in detail the manner and form in which it has complied and intends to comply with this order.

VI.

It is further ordered, That, for the purposes of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to University made at its principal offices, University shall permit any duly authorized representatives of the Commission:

1. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in University's possession or control relating to any matter contained in this order; and
2. Upon five days' notice to University and without restraint or interference from University, to interview its officers or employees, who may have counsel present, regarding such matters.

VII.

It is further ordered, That University shall notify the Commission at least thirty (30) days prior to any proposed change, such as dissolution, assignment, sale resulting in the emergence of a successor corporation or association, or the creation or dissolution of subsidiaries or affiliates, which may affect compliance obligations arising out of this order.

Commissioner Owen dissenting.

IN THE MATTER OF

DIRAN M. SEROPIAN, M.D.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9248. Complaint, June 12, 1991--Decision, Sept. 11, 1992*

This consent order prohibits, among other things, a Florida physician from conspiring with the medical staff of Broward General Medical Center to prevent competition from physicians of the Cleveland Clinic Florida, a non-profit provider of health care services, or any other provider of health care services.

Appearances

For the Commission: *Mark J. Horoschak* and *Paul Nolan*.

For the respondent: *Davis W. Duke, Jr.* and *J. Cameron Story, III*,
Gunster, Yoakley & Stewart, Ft. Lauderdale, FL.

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 Diran M. Seropian, M.D., hereinafter sometimes referred to as "respondent" or "Dr. Seropian," has violated and is violating Section 5 of the Federal Trade Commission Act, as amended, 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 in that respect as follows:

PARAGRAPH 1. Respondent Diran M. Seropian, M.D., is a plastic surgeon licensed by the State of Florida and practices in Fort Lauderdale, Florida. His office address is 1414 S.E. 3rd Avenue, Fort Lauderdale, FL. Dr. Seropian is engaged in the business of providing health care services to patients for a fee.