

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.

PAR. 2. The Medical Staff of Broward General Medical Center ("the Medical Staff") is an unincorporated association, organized and existing under the laws of the State of Florida, with its mailing address at 1600 South Andrews Avenue, Fort Lauderdale, FL. The Medical Staff is composed of physicians and other health care practitioners who have privileges to attend patients at Broward General Medical Center ("Broward General" or "the Hospital"). Appointment to the Medical Staff is a prerequisite for physicians who seek to admit, diagnose, or treat patients at Broward General. Dr. Seropian has been the Chief of the Medical Staff at Broward General since 1986.

PAR. 3. The North Broward Hospital District ("NBHD") is a public hospital district chartered under Florida law to serve the northern two-thirds of Broward County, Florida. The NBHD is licensed by the State of Florida to operate 1567 general acute care beds. NBHD owns and operates four hospitals including Broward General, which is licensed to operate 744 general acute care beds. Broward General offers subspecialty services such as cardiac surgery, and is one of the few tertiary care hospitals in the Northern Broward County area.

PAR. 4. The Cleveland Clinic Florida ("CCF"), which is an affiliate of the Cleveland Clinic Foundation located in Cleveland, Ohio, provides comprehensive health care services to patients. CCF, which is located in Fort Lauderdale, operates a multispecialty group medical practice that provides consumers an alternative to traditional individual and single specialty group forms of practice. Under CCF's multispecialty group practice format, patients can obtain all necessary specialized medical care and ancillary services from CCF employees, including salaried physicians.

PAR. 5. The acts and practices of the respondent, including those herein alleged, are in or affect commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

PAR. 6. As early as September 1985, the Medical Staff and respondent Dr. Seropian had formally resolved: (a) to demand that NBHD "immediately cease all negotiations with the Cleveland Clinic"; and (b) that the Medical Staff had "no confidence" in Broward General's administration or the NBHD Board because of

their negotiations with the Clinic. The Medical Staff's resolutions were intended as, and were understood by hospital officials to be, threats that the Medical Staff's members would withhold patient admissions from Broward General if NBHD entered an affiliation with CCF.

PAR. 7. From January 1988 to October 1989, the Medical Staff and respondent Dr. Seropian engaged in, among other things, the following concerted acts and practices:

A. Soliciting physicians on the Medical Staff to join in a combination or conspiracy to threaten to withhold patient admissions from Broward General if the NBHD established a business relationship with CCF or supported CCF's application for a certificate of need to build its own hospital;

B. Threatening to boycott Broward General by representing to the NBHD that doctors would act jointly to withhold patient admissions from Broward General if the NBHD approved the hospital privilege applications of CCF physicians;

C. Threatening Broward General that all Medical Staff officers would refuse to provide their services to the Hospital, and threatening to have the Medical Staff cease to perform its functions, if the NBHD took steps to provide CCF physicians with access to Broward General's facilities; and

D. Refusing to process applications of CCF physicians for hospital privileges, and obstructing the NBHD's attempt to have an independent panel of Medical Staff physicians review the hospital privilege applications of CCF physicians.

PAR. 8. The acts and practices described in paragraphs six and seven were undertaken as part of a combination or conspiracy by and among respondent Dr. Seropian, the Medical Staff and others to prevent, delay, and limit competition from CCF in Northern Broward County through the use of boycott threats and other coercive means. The combination was directed at restricting competition in Northern Broward County from (1) CCF, (2) CCF physicians, and (3) any joint venture or affiliation between CCF and Broward General.

PAR. 9. The purpose, effects, tendency, or capacity of the respondent's conduct described in paragraphs six to eight are and

have been to restrain trade unreasonably and hinder competition in the provision of health care services in the Northern Broward County area in the following ways, among others:

A. Depriving consumers of the benefits of competition between CCF's integrated multispecialty group practice and independent fee-for-service practitioners;

B. Depriving consumers of the full array of services that CCF sought to offer consumers in Northern Broward County;

C. Hindering CCF's ability to offer health care services to consumers by raising its costs and reducing its efficiency, and delaying or preventing CCF from offering specialty and subspecialty services; and

D. Limiting competition among physicians in Northern Broward County.

PAR. 10. The combination, conspiracy, acts and practices described above constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act. Such combination, conspiracy, acts and practices, or the effects thereof, are continuing and will continue or recur in the absence of the relief herein requested.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent named in the caption hereof with a violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondent having been furnished with a copy of that complaint, together with a notice of contemplated relief; and

The respondent 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 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) 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, and having duly considered the comments filed thereafter by interested persons pursuant to Section 3.25 of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent is a licensed physician and doing business under and by virtue of the laws of the State of Florida, with his office and principal place of business located at the address listed in the complaint attached hereto.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the 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 Medical Staff of Broward General Medical Center, its successors, assigns, officers, directors, committees, agents, employees, and representatives.

B. "*NBHD*" means the North Broward Hospital District, a tax supported entity with its principal offices located at 1625 Southeast Third Avenue, Fort Lauderdale, FL., the hospitals that are owned by the North Broward Hospital District, and its subsidiaries, affiliates, successors, assigns, officers, administrators, directors, committees, agents, employees, and representatives.

C. "*Broward General*" means the Broward General Medical Center, one of the hospitals of the North Broward Hospital District, located at 1600 South Andrews Avenue, Fort Lauderdale, FL., its

subsidiaries, affiliates, successors, assigns, officers, administrators, directors, committees, agents, employees, and representatives.

D. "CCF" means Cleveland Clinic Florida, a nonprofit corporation organized under Florida law, located at 3000 West Cypress Creek Road, Ft. Lauderdale, FL., its parent foundation (Cleveland Clinic Foundation, which is located at 9500 Euclid Avenue, Cleveland, OH.), any entity located in Florida that is owned, controlled or under the management of Cleveland Clinic Florida or Cleveland Clinic Foundation, and its successors, assigns, officers, directors, committees, agents, employees, and representatives of Cleveland Clinic Florida or Cleveland Clinic Foundation.

E. "*Corrective action*" means action taken pursuant to and in conformance with the Medical Staff's bylaws against any person with hospital privileges at Broward General whose activities or professional conduct is reasonably believed to be detrimental to patient safety or the delivery of quality patient care.

II.

It is ordered, That respondent directly or indirectly, or through any device, in connection with activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from entering into, attempting to enter into, organizing, continuing, or acting in furtherance of any agreement or combination, express or implied, between or among the Medical Staff or its members or with other physicians, providers of health care services, medical societies, hospitals, or medical staffs, for the purpose or with the effect of preventing or restricting the offering or delivery of health care services by the NBHD, Broward General, CCF, any CCF physician, or any other provider of health care services, including any agreement to:

A. Refuse to deal or threaten to refuse to deal with the NBHD, Broward General, CCF, any CCF physician, or any other provider of health care services, including, but not limited to, any agreement or combination to refuse or threaten to refuse to:

1. Participate in any Medical Staff or NBHD committee, admit any patient to any NBHD hospital, fulfill any Medical Staff obligation imposed or recognized under any provision of the Florida statutes, the Code of the NBHD, the By-Laws or Rules and Regulations of the Medical Staff, or fulfill any other function customarily performed by the Medical Staff;

2. Refer patients to, accept patient referrals from, provide back-up for, or consult in the treatment of any patient with, any CCF physician; or

3. Associate with NBHD or CCF as an employee or independent contractor, or otherwise deal with NBHD, CCF or any CCF physician.

B. Deny, impede, or refuse to consider any application for hospital privileges or for changes in hospital privileges by any person solely because of his or her affiliation with CCF.

C. Deny or recommend to deny, limit, or otherwise restrict hospital privileges for any CCF physician without a reasonable basis for concluding that the denial, limitation, or restriction serves the interests of the hospital in providing for the efficient and competent delivery of health care services.

D. Discriminate, or threaten to discriminate, against any CCF physician with hospital privileges at Broward General with respect to the rights accorded to a member of the Medical Staff.

E. Encourage, advise, pressure, induce, or attempt to induce any person to engage in any action prohibited by this order.

III.

A. *It is further ordered*, That this order shall not be construed to prohibit the respondent from engaging, pursuant to the Medical Staff's by-laws, in credentialing, corrective action, utilization review, quality assurance, or peer review at Broward General, where such conduct neither constitutes nor is part of any agreement, combination or conspiracy the purpose, effect or likely effect of which is to impede competition unreasonably.

B. *It is further ordered*, That this order shall not be construed to prohibit respondent from entering into an agreement or combination

with any other physician or health care practitioner with whom he practices in partnership or in a professional corporation, or who is employed by the same person, as respondent.

C. *It is further ordered*, That this order shall not be construed to prohibit respondent from lawfully carrying on his private medical practice and providing patient care at Broward General or otherwise prohibit the respondent from unilaterally exercising his professional judgment in connection with the making or receiving of patient referrals to and from other physicians.

IV.

It is further ordered, That respondent shall:

A. Within thirty (30) days after this order becomes final, mail a copy of this order to the Chairman of the Board of the NBHD and to each member of the Medical Council of the Medical Staff of Broward General Medical Center.

B. Within sixty (60) days after this order becomes final, 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 respondent complied with this order and intends to comply with this order.

C. For a period of three (3) years after this order becomes final, respondent shall promptly notify the Commission: (1) of any change in his business address; and (2) whenever he enters into any new business, employment, or hospital affiliation that involves the provision of medical care. Each such notice shall include the respondent's new business address, hospital affiliation, a statement of the nature of the business or employment in which respondent is newly engaged, and a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

IN THE MATTER OF

JASON PHARMACEUTICAL, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3392. Complaint, Sept. 16, 1992--Decision. Sept. 16, 1992

This consent order prohibits, among other things, the Maryland marketers of the Medifast diet programs, from misrepresenting the efficacy of any very-low-calorie diet program, and from falsely claiming that their physicians are certified in the treatment of obesity. In addition, the order requires the respondents to possess competent and reliable scientific evidence to substantiate any claims about the success of patients on any diet program in achieving or maintaining weight loss, and requires that claims about the safety of the program be accompanied by a clear disclosure that physician monitoring is needed to minimize the potential for health risks.

Appearances

For the Commission: *Richard F. Kelly, Michael C. McCarey and Matthew Daynard.*

For the respondents: *Edward F. Glynn and Jeffrey D. Knowles, Venable, Baetjer, Howard & Civiletti, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Jason Pharmaceuticals, Inc. ("Jason"), a corporation, and Nutrition Institute of Maryland, Inc. ("NIM"), a corporation (hereinafter "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 Jason Pharmaceuticals, Inc., is a Maryland corporation, with its offices and principal place of business at 11435 Cronhill Drive, Owings Mills, MD.