

IN THE MATTER OF

HEALTH MANAGEMENT RESOURCES CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3455. Complaint, Aug. 17, 1993--Decision, Aug. 17, 1993*

This consent order prohibits, among other things, a Massachusetts-based marketer of very-low-calorie diet programs (rapid weight loss, modified fasting diets of 800 or fewer calories per day) from making false or unsubstantiated claims about health risks, weight loss, weight loss maintenance, acceptance of its program by the medical profession, or low success rates of other diet programs; and requires certain disclosures in conjunction with safety and weight loss maintenance claims in the future, and scientific evidence to back up comparison studies or claims of acceptance by the medical profession.

Appearances

For the Commission: *Renate Kinscheck* and *Richard F. Kelly*.

For the respondent: *James Sneed, McDermitt, Will & Emery*,
Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that Health Management Resources Corporation, a corporation (hereinafter "respondent"), has 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. Respondent Health Management Resources Corporation is a Nevada corporation, with its offices and principal place of business at 59 Temple Place, Boston, MA.

PAR. 2. Respondent is engaged, and has been engaged, in the sale and offering for sale of physician-supervised very-low-calorie

diet ("VLCD") programs and related nutritional products to the public through cooperating hospitals and clinics. VLCDs are rapid weight-loss, modified fasting diets of 800 calories or less per day requiring medical supervision. The HMR VLCD diet programs provide between 520 and 800 calories per day. Relying on training provided by respondent, staff of hospitals and clinics participating in the HMR program frequently advise patients to remain on the HMR VLCD program until they reach their goal weight, even when such advice results in patients remaining on the VLCD for extensive periods of time. The HMR diet programs include "foods" or "drugs" within the meaning of Section 12 of the Federal Trade Commission Act, 15 U.S.C. 52.

PAR. 3. Respondent has created and placed advertisements, and provided camera-ready advertising copy to its participating hospitals and clinics for placement in various periodicals that are in general circulation to the public, to promote its diet programs to prospective patients. Typical of respondent's advertising, but not necessarily inclusive thereof, are the materials entitled "Are You Considering a Fasting Program?," and "The treatment of choice for serious weight problems," attached hereto as Exhibits A-1 and A-2. Respondent further advertises its diet programs to the public by means of brochures, leaflets, and newsletters which it provides to participating hospitals and clinics to give to patients and prospective patients, and sample promotional articles for insertion in newsletters for dissemination to patients and prospective patients. Typical of respondent's brochures, leaflets, newsletters and promotional articles, but not necessarily inclusive thereof, is the brochure entitled "When Your Next Diet Fails . . .," Exhibit B-1; the leaflet entitled "The Weight & Risk Factor Management Center," Exhibit B-2; the newsletter entitled "For Your Better Health," Exhibit B-3, and the promotional article, untitled, Exhibit B-4. Respondent also promotes its diet programs to the public by means of orientation sessions for prospective patients. Respondent provides training, including written scripts and audio tapes, to staff of participating hospitals and clinics for use in conducting these orientation sessions. Typical of respondent's orientation session scripts is Exhibit C-1. Respon-

dent further provides training to staff of participating hospitals and clinics upon which staff relies in making representations and recommendations to patients and prospective patients regarding the use of respondent's VLCD programs.

PAR. 4. The acts and practices of respondent alleged in this complaint are, and have been, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Respondent's advertising and promotional material contains the following statements:

- a. "Safe, rapid weight loss." (Exhibits B-1 pp. 2 & 3; A-1; A-2; B-2; B-3 p. 2)
- b. "Completely safe" (orientation tape)
- c. "Why is it [the diet] safe? The quality of the VLCD ... high quality supplements associated with medical supervision and effective education ... The medical supervision makes it safe." (Exhibit C-1, pp. 11-12)

PAR. 6. By and through the use of the statements referred to in paragraph five, and others not specifically set forth herein of similar import and meaning, respondent represents, and has represented, directly, or by implication, that the HMR diet programs are unqualifiedly free of health risks. Respondent has failed to disclose that physician supervision is required to minimize the potential risk to patients of the development of health complications on very-low-calorie diets. In view of the representation that the HMR program is free of health risks, the disclosure as to the requirement for medical supervision is necessary. Therefore, in light of respondent's failure to disclose, said representation was and is misleading.

PAR. 7. Respondent's advertising and promotional material contains the following statements:

- a. "Its been clear now for a number of years, around 15 years, that the use of very low calorie diets with high biologic value protein supplementation and appropriate amounts of carbohydrates with a little bit of fat . . . is very, very widely accepted by the medical profession as a whole." (orientation tape)
- b. "The VLCD is the treatment of choice" (Exhibit C-1, p. 14)

PAR. 8. By and through the use of the statements referred to in paragraph seven, and others of similar import and meaning, respondent represents, and has represented, directly or by implication, that the HMR VLCD diet program, including the practice of advising patients to remain on the program for extensive periods of time, is widely accepted by the medical profession as a whole, and is considered to be the preferred treatment by most medical experts.

PAR. 9. By and through the statements and representations referred to in paragraphs seven and eight, respondent represents, and has represented, directly or by implication, that at the time respondent made those representations, respondent possessed and relied upon a reasonable basis for those representations.

PAR. 10. In truth and in fact, at the time respondent made the statements and representations referred to in paragraphs seven and eight, respondent did not possess and rely upon a reasonable basis for those representations. Therefore, the representation set forth in paragraph nine was and is false and misleading.

PAR. 11. Respondent's advertising contains the following statements:

- a. "Over 60% of weight lost is kept off long term." (Exhibits B-1 p. 4; B-2)
- b. "Our national data system assures that our patients receive the highest quality program with lasting results . . . our patients who are three years out of maintenance have regained less than 40% of their weight" (B-3 p.2)

PAR. 12. By and through the use of the statements referred to in paragraph eleven, and others not specifically set forth herein of similar import and meaning, respondent represents, and has represented, directly, or by implication, that:

- a. Over the long term, HMR patients on average keep off over 60% of the weight they lose;
- b. Three years after ending maintenance, HMR patients on average keep off more than 60% of the weight they lose; and
- c. The HMR diet programs are successful long-term treatments for obesity.

PAR. 13. By and through the statements and representations referred to in paragraph eleven and twelve, respondent represents, and has represented, directly, or by implication, that at the time respondent made those representations, respondent possessed and relied upon a reasonable basis for those representations.

PAR. 14. In truth and in fact, at the time respondent made the statements and representations referred to in paragraphs eleven and twelve, respondent did not possess and rely upon a reasonable basis for those representations. Therefore, the representation set forth in paragraph thirteen was and is false and misleading.

PAR. 15. Respondent's advertising contains representations about the success of commercial weight loss programs in achieving and maintaining weight loss. Typical of respondent's representations of commercial programs' success, but not necessarily inclusive thereof, are the statements contained in Exhibit B-1 p. 4. The aforesaid advertising contains the following statements:

- a. "Average weight loss [in commercial programs] --11.5lbs." (Exhibit B-1 p. 4).
- b. "Less than 8% lose 40 or more pounds [in commercial programs]." (Exhibit B-1 p. 4)
- c. "One year after reaching goal weight over 90% regain all of weight lost." (Exhibit B-1 p. 4)

PAR. 16. By and through the statements and representations referred to in paragraph fifteen, and others not specifically set forth herein of similar import and meaning, respondent represents and has represented, directly, or by implication, that patients in commercial weight loss programs typically lose 11.5 lbs, that less than 8% of such patients lose 40 or more pounds, and that 90% of such patients regain all of their lost weight one year after reaching goal weight.

PAR. 17. By and through the statements and representations referred to in paragraphs fifteen and sixteen, respondent represents, and has represented, directly, or by implication, that at the time respondent made those representations, respondent possessed and relied upon a reasonable basis for those representations.

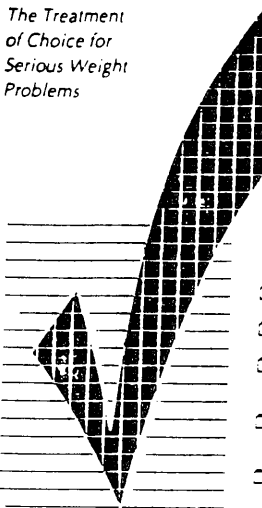
PAR. 18. In truth and in fact, at the time respondent made the statements and representations referred to in paragraphs fifteen and sixteen, respondent did not possess and rely upon a reasonable basis for those representations. Therefore, the representation set forth in paragraph seventeen was and is false and misleading.

PAR. 19. The acts and practices of respondent alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce and "false advertisements" in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. 45(a) and 52.

EXHIBIT A-1

HMR *Fasting* PROGRAM

*The Treatment
of Choice for
Serious Weight
Problems*



Are You Considering a Fasting Program?

Choose . . .

- ☐ Medical supervision
- ☐ Safe, rapid weight loss
- ☐ Superior-tasting nutritional supplement
- ☐ Realistic approach to weight management
- ☐ Weekly educational sessions
- ☐ 18-month maintenance program

HMR *Fasting* PROGRAM

Mon. Plan: Faulkner Hospital Jamaica Plain, MA (617) 522-3941 Neponset Health Center Dorchester, MA (617) 282-3200 Lawrence Memorial Hospital Medford, MA (617) 395-2260 Norwood Hospital Norwood, MA (617) 769-4000, x2136 Skip Sviokla, MD Cambridge, MA (617) 864-6900 Hanover, MA (617) 871-5585 Dennis H. Rapa, MD Natick, MA (508) 665-0073	New England Center for Health Promotion Cranston, RI (401) 944-5703 HMR Fasting Program Chestnut Hill, MA (617) 232-4886 Emerson Hospital Concord, MA (508) 369-4211 Newton-Wellesley Hospital Concord, MA (617) 965-1273 The Better Health Corporation Saugus, MA 1-800-STA-SLIM
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**Offered by hundreds of
medical centers nationwide**

Health Management Resources, 59 Temple Place, Boston, MA (617) 357-9876

EXHIBIT A-2

The ²~~100~~ Fasting Program at

 Emerson Hospital

*"The treatment of choice
for serious weight problems"*

When your weight problems are approached realistically and you're given accurate information about weight management, being overweight does not have to be a way of life.

The ~~100~~ Fasting Program, offered by hundreds of hospitals and medical centers nationwide, includes:

- Medically supervised supplemented fast
- Safe, rapid weight loss
- Educational and behavioral sessions
- No list of restricted foods
- Intensive maintenance program

You are invited to attend a
FREE ORIENTATION

Date: Thursday, January 5

Time: 5:30 - 7:30 p.m.

Place: New Assembly Room
Emerson Hospital
Old Road to Nine Acre Corner
Concord, MA

Seating is limited.

RSVP (508) 369-4211 or (617) 357-9876.

799

Complaint

EXHIBIT B-1

WHEN
YOUR
NEXT
DIET
FAILS...



DON'T
BLAME
YOURSELF.

FIND
OUT
WHY.

"Our goal is to
teach you the skills
you need to self
manage your weight
for a lifetime."

HMR *Fasting*
PROGRAM

Complaint

116 F.T.C.

EXHIBIT B-1

WHY
DIETS
FAIL

- Diets do not consider your individual eating style.
- Diets do not teach you the facts about calories.
- Diets do not teach you how physical activity relates to your weight.
- Diets do not teach you how to keep off the weight you lose.

HEALTH
MANAGEMENT
RESOURCES
IS
DIFFERENT

We understand why diets have failed for you in the past and we have developed a program that can be tailored to your individual lifestyle. Our goal is to facilitate safe, rapid weight loss while teaching you the skills you need to self-manage your weight over a lifetime:

- Our approach is educational and behavioral.
- There is no list of "forbidden" or "restricted" foods.
- We emphasize a calorie balancing system where you make your own food choices based on your own eating style.
- We teach you realistic ways to incorporate physical activity into your lifestyle.

A
PROFESSIONAL
STAFF

The staff of HMR is comprised of health care professionals: physicians, nurses, behaviorists and dieticians, who have expertise in developing and implementing high quality programs in behavioral medicine. We believe that it is the combination of medically supervised weight loss and intensive behavioral learning that accounts for our patients' success.

002354

EXHIBIT B-1

A
**MEDICALLY
SUPERVISED
PROGRAM**

HMR combines the most effective medical and behavioral methods to offer a comprehensive, medically supervised High Risk Program for individuals who are 20% or more over their ideal body weight where weight loss would reduce their medical risk. The program includes a 520calorie supplemented diet, weekly physician visits, periodic lab tests and weekly 1½ hour educational/behavioral group sessions.

WEIGHT LOSS CHART				
AVERAGE WEIGHT LOSS FIRST MONTH	AVERAGE WEIGHT LOSS EACH MONTH FOLLOWING	FIND YOUR CURRENT WEIGHT	AVERAGE WEIGHT LOSS FIRST MONTH	AVERAGE WEIGHT LOSS EACH MONTH FOLLOWING
31	20		34	31
25	22	275-300	28	23
23	18	250-275	25	19
20	15	225-250	22	17
17	14	200-225	20	15
15	12	175-200	17	13
13	10	150-175	14	11
11	9	135-150	—	—
10	8	120-135	—	—

Those enrolled in the HMR program experience significant improvement in their health. Most patients with hypertension or Type II diabetes are able to reduce or totally eliminate all medications and all patients dramatically reduce their risk of heart disease and other medical risk factors.

**SAFE,
RAPID
WEIGHT
LOSS**

The program utilizes a superior tasting, high quality dietary supplement, HMR 500, to accelerate safe, rapid weight loss. HMR 500 has been developed from many years' experience working with thousands of patients in medically supervised, supplemented low calorie diet programs. HMR 500 exceeds all RDA recommendations and contains a high enough potassium content to render additional supplementation unnecessary. In taste tests, people prefer HMR 500 to other leading supplements over 95% of the time.

002355

Complaint

116 F.T.C.

EXHIBIT B-1

KEEPING
WEIGHT
OFF

We have an intensive Maintenance Program which teaches you skills and individual procedures to balance your calories and maintain your weight loss.

CONSIDER
THESE
DIFFERENCES

Commercial Programs	Health Management Resources
Average weight loss—11.5 lbs.	Average weight loss—49.8 lbs.
Less than 8% lose 40 or more pounds	Over 50% lose 40 or more pounds
1 year after reaching goal weight over 90% regain all of weight lost	1 year after reaching goal weight approx. 15% regain all of weight lost
Less than 10% of weight lost is kept off long term	Over 60% of weight lost is kept off long term

THE
FIRST
STEP

If you are interested in learning more about our program, contact us for the date of the next free educational orientation. There is no obligation and we assure you that the information you will receive will be useful to you in your future efforts to lose or maintain your weight.



Health Management Resources

RISK FACTOR REDUCTION PROGRAMS
59 Temple Place, Boston, MA 02111

(617) 357-9876

002356

EXHIBIT B-2



AT PASCACK VALLEY HOSPITAL
Old Hook Road • Westwood, NJ 07675 • (201) 358-4600

C-1447
B1427L

Diets do not...

- consider your individual eating style.
- teach you the facts about calories.
- teach you how physical activity relates to your weight.
- teach you how to keep off the weight you lose.

We understand why diets have failed for you in the past and we have developed a program that is tailored to your individual lifestyle. Our goal is to facilitate safe, rapid weight loss by offering a comprehensive medically supervised program while teaching you the skills you need to self-manage your weight over a lifetime.

*Consider these facts at PVH's Center...**... about weight loss.*

- Average weight loss - 49.8 lbs.
- Over 50% lose 40 or more pounds.
- Over 60% of weight lost is kept off long term.

... about keeping it off.

- Our approach is educational and behavioral.
- There is no list of "forbidden" or "restricted" foods.
- We emphasize a calorie balancing system where you make your own food choices based on your own eating style.
- We teach you realistic ways to incorporate physical activity into your lifestyle.

in association with
HMR Health Management Resources
WEIGHT LOSS AND RISK FACTOR REDUCTION PROGRAM

Treatment and mail...

YES, I would like to learn more about the Weight and Risk Factor Management Center at Pascack Valley Hospital. If you prefer to call us directly, our number is (201) 358-4600.

- ☐ Call me with the date of the next free educational orientation.
- ☐ Send me a brochure describing the programs available at the Center.

NAME _____ TELEPHONE _____
ADDRESS _____
CITY _____ STATE _____ ZIP _____

Exhibit B-2

EXHIBIT B-3

HEALTH MANAGEMENT RESOURCES NEWSLETTER

VOLUME 5 - NUMBER 1

For Your Better HEALTH

Q-343
B-437

Surviving the Holidays: Weight Control Strategies

The holidays are a special time of family gatherings, religious ceremonies, shared friendship, beautiful traditions, and oh, yes, food. Lots and lots of high-calorie food.

Aunt Emily's pecan pie and Cousin Fred's famous giblet gravy at Thanksgiving dinner kick off a six-week parade of party feasting and seasonal snacking. This doesn't stop until January finds us at the beginning of a new year with an average holiday weight gain of 4 to 6 pounds.

The festivities are now over. The time has come to take off the extra weight. In fact, 50% of us begin a diet this year. But only about 2% to 3% will actually reach our goal weight and stay there for a year.

Why? Misinformation. Most people think starch (pasta, potatoes, rice) is their enemy, so they cut out carbohydrates. This seems to work at first, because the major result of a low carbohydrate diet is a short-term water loss. When the body begins to reabsorb water, the lost pounds reappear, and the dieter, discouraged and feeling like a failure, gives up.

Know where the calories are

The good news is you can lose weight, keep it off, and still enjoy hearty meals. All you need is the right information.

Your weight is controlled by the number of calories you consume and the number you expend in physical activity.

When you learn to balance food calories with calories burned, you'll take the pounds off. And keep them off.

You can substantially reduce your caloric intake by cutting down on fats. With nine calories per gram, fat has more than twice the calories of carbohydrates and protein which weigh in at only four per gram. So if you learn where the fats are lurking in your diet you can avoid them. It takes only an extra 3,500 calories to put on one pound of body fat.

Eat more and weigh less

Quantity is not a reliable measure of how fattening a meal is. You don't have to eat less food. Just less fat. For example, a simple dinner of a 12-oz. T-bone steak and a cup of black coffee has a total of 1200 calories. (A 125-lb. woman needs only 1400 calories daily to maintain her weight.) However, a dinner of a 12-oz. broiled haddock fillet, a baked potato with a tablespoon of sour cream, 1/2 cup of broccoli, a salad with diet dressing, a dinner roll with a pat of butter, a scoop of ice cream, and two cups of coffee with cream and sugar serves up only 910 calories — and a lot more food.

see FEASTING, last page

The Problem?

Fat! Americans are eating diets containing 31 percent more fat. For equal volumes of food, fat has more than twice the calories of protein and carbohydrate.

The Solution

Look for ways to "de-fat" your food choices.

- Reducing the amount of fat we eat is the single most effective way to cut calories without eating less food.
- Grill, bake, broil, and stir-fry in a dry wok instead of frying and sautéing.
- "De-fat" your recipes by substituting lower fat ingredients like skim milk, reduced-calorie margarine, egg whites, sour cream, and non-fat yogurt.
- Use more fish, chicken, or turkey instead of red meat. You'll save 25 to 100 calories per oz.
- Try reducing the amount of oil and sugar in your recipes. These changes often do not affect flavor and texture. Experiment!
- Eat more fruits and vegetables. These contain little or no fat, so large volumes don't add up to high calories. Try mealless meals or use meal as a condiment.

1103992

Exhibit B

EXHIBIT B-3

Take Charge Of Your Health With The

HMR*Fasting*
PROGRAM

Losing weight and maintaining your correct body weight are the major steps you can take toward a longer and healthier life.

People who are more than 20% over their ideal body weight triple their chances of developing diabetes while their risk of hypertension could be as much as 5.6 times greater. Taking off extra pounds is more than just improving your appearance — it's a matter of improving your life.

Find the right weight-loss program for you

So now the question is, how do you do it? A comprehensive, medically supervised program offering a Very Low-Calorie Diet is an excellent way. The HMR Fasting Program combines medical and behavioral methods so effectively that our patients lose more weight than those in commercial weight loss programs, and maintain their weight loss for a longer time.

As you investigate very low-calorie diet programs, ask yourself these questions:

- **Is the program medically supervised?** The HMR Fasting Program includes weekly physician visits and bi-weekly lab tests. All patients are screened to be sure they are medically eligible.
- **Is the supplement good tasting and of high nutritional quality?** Our supplement, HMR 500, has proven itself over the years with thousands of patients. Nutritionally complete, it contains 150% of the Required Daily Allowance and necessary potassium. In taste tests, people prefer HMR 500 to other leading supplements more than 95% of the time.
- **Does the program include education?** Your weight loss is only the beginning. A comprehensive educational program which includes weekly 1-1/2 hour educational/behavioral sessions is an important, required part of the HMR Fasting Program. We teach you the skills you need to manage your weight over the long term.
- **Is there a long term maintenance program?** We want you to keep your weight off permanently. That's why we will continue teaching and refining your skills for as long as you need them to reach your goal weight.
- **What kind of follow-up and staff support is there?** HMR's staff of health care professionals knows that weight management is a learned skill. They will work closely with you to tailor the program to fit your lifestyle.
- **Do you learn about balancing calories and exercise?** HMR teaches the relationship between calorie intake, basic nutrition, and physical activity. With our calorie balancing system you can learn to make your own food choices to suit your personal eating style.
- **How do you judge the success of a program?** Our success depends on our patients' success, so we monitor how they're doing all across the country. Our national data system assures that our patients receive the highest quality program with lasting results.

The bottom line: success

The HMR Fasting Program has an impressive track record. Its low-calorie supplement, education, behavioral training, long-term support, and calorie/physical activity balancing has helped patients lose an average of 49.8 lbs. (compared with an average 11.5 pound loss in commercial programs). And while 95% of those who lose weight with commercial programs gain it all back within a year, our patients who are three years out of maintenance have regained less than 40% of their weight, and many have kept it all off.

We invite you to come to our free, no obligation educational orientation. The information you receive will help you start to take control of your own health.

"The HMR Fasting Program combines medical and behavioral methods so effectively that our patients lose more weight than those in commercial weight loss programs, and maintain their weight loss for a longer time."

003993

EXHIBIT B-3

Patient Profile: One Step At A Time

Jeanene Olson, age 65, was told a year and a half ago by a heart specialist that she would die if she didn't lose weight. Now seven months into maintenance, she is sustaining a 100 pound weight loss.

When Jeanene entered the HMR Fasting Program at Austin Diagnostics, TX in May of 1988 she was in a wheelchair with neuropathy of her legs, on high levels of insulin daily, and suffering from severe heart problems—all associated with obesity.

Jeanette tried a number of diet programs over the years but was never able to keep off weight she lost. "I'd be given a slip of paper and told to go on this 1500 calorie per day diet and lose weight. It just never worked. Maybe for 10-20 pounds it would but with the amount of weight I had to lose, it just was too difficult."

Jeanette Olson (pictured on left) — "I have never been able to travel. I would say I didn't have the money but it was really because I couldn't get around with my weight. I hadn't seen my sister in 35 years because I was too ashamed. This Thanksgiving I went to visit my sister in Florida. It was wonderful!"



"If I had done this earlier I probably wouldn't have so many health problems today. I never thought I could come so far. But I'm proof that it's never too late."

According to Jeanette, being on the supplemented Very Low Calorie Diet was easier for her than other diets because it eliminated food choices, the only choice she had was whether to eat vanilla, chocolate or chicken soup. She says the staff of Austin Diagnostics also was very supportive and the medical supervision was thorough. "When you have over 100 pounds to lose you need a physician to monitor you," she advises.

While losing weight with the HMR Fasting Program Jeanette learned how to incorporate realistic changes into her lifestyle to help her keep off the weight she lost.

Jeanette now feels confident that by incorporating physical activity into her lifestyle and eating a lower fat diet she will be able to balance calories over time. For example, she eats mostly white turkey and chicken (at 45 calories per ounce) rather than red meat (at 100 calories per ounce). "I still eat high fat foods and I certainly enjoy them," she says. "But now I know what it takes to balance them."

Physical activity is an important component of the HMR Fasting Program. After six months in the program, Jeanette left her wheelchair to begin walking with a walker and now uses a cane to get around. Between walking, stationary biking and swimming, Jeanette currently burns approximately 3,000 calories per week in physical activity.

"The most important thing for me is to keep up my activity," she says. "That's something I never realized. I was in the military years ago and had activity built into my life, but I never realized the relationship between activity and my weight."

"If I had done this earlier I probably wouldn't have so many health problems today. I never thought I could come so far," says Jeanette. "But I'm proof that it's never too late. I don't feel sixty-five. That's for sure. Sometimes I even feel good enough to go back to work! Losing this weight has given me a sense that I can really do something. And I did it for me, not for anybody else. I would recommend this to anyone who has a lot of weight to lose."

1103994

EXHIBIT B-3

from: FEASTING, first page

If you're tired of "diet plates" with a hamburger patty, cottage cheese, and a peach half, try ordering a large turkey sandwich with lettuce, tomato, mustard, and a side order of coleslaw. You'll get more food and less than half the calories.

If you're an incurable nibbler or really enjoy nighttime snacking, there's no need to change your eating habits, just your food. In choosing what to snack on, remember that fried foods are higher in fat than their baked or broiled counterparts; that air-popped popcorn is a lower-calorie snack than peanuts, which have 30 times the calories; and that a turkey sandwich has half the calories of pastrami and cheese. It's not when you eat, it's how much fat and calories you eat that counts.

A little walking goes a long way

In addition to limiting calories, you can burn them up as well. Exercise can even "buy" you some extra calories. If you want to eat some higher-calorie foods, then work those calories off. We're not suggesting that you turn yourself into a world-class athlete, just that you become more active. You might get off the bus a few stops early and walk or try parking in the back of the lot. Another quick trick is to use the stairs instead of taking the elevator.

Got a few spare minutes at lunch? You can sneak in some exercise and give yourself a change of pace by walking 10 minutes away from your place and 10 minutes back each day. If you weigh 150 lbs., you'll burn off about 100 calories, a ten-pound weight loss in one year.

Physically active people have fewer struggles with extra pounds than sedentary people, so it's a good idea to make your activities a regular part of every day. If you keep it up even after you've hit your goal weight, you'll increase your

chances of staying there.

The key to regular exercise is to build it right into your daily routine. It's easier to stick to an activity when it fits into your lifestyle and you enjoy doing it.

The trick to holiday treats

You can change some of your food choices to keep those excess calories down. For example, take a look at the traditional turkey dinner. Nuts are much higher in fat than raw vegetables, so you could munch more carrots and celery without piling up the calories you would with the nuts. Dark meat has more fat than white meat. If you want to cut the meal's fat content, remove the skin. Putting gravy through a skimmer, reduces the calories by 80%. Stuffing baked outside of the bird saves even more. Candied sweet potatoes have five times as many calories as baked squash. And you can have two pieces of pumpkin or apple pie for the same number of calories as one piece of pecan pie — it's your choice.

As you decide what to put on your plate, you can make some tradeoffs. If the holiday just wouldn't be a holiday without your favorite food that is high in fat, simply balance it by cutting calories elsewhere. Then round up the family, and enjoy a walk around the neighborhood.

Recipe for success

So if your holiday celebrations leave you with unwanted extra pounds, you can lose weight sensibly. And permanently.

When you know where the calories and fats really are, you can make educational diet choices. You'll know how to lower the fats you eat while increasing your carbohydrates. Add regular physical activity, and you'll be able to enjoy the festivities as well as control your weight. Enjoy!

HMR Health Foundation: The American Indians

Obesity and its complications are well-known to American Indian communities and reservations where lifestyles have changed dramatically over the past 100 years. A decrease in activity and a diet higher in fat content has led to an incidence of obesity between two and five times U.S. averages.



The Supai reservation at the bottom of the Grand Canyon has a special "supplement" carrier.

Through the Indian Health Service, HMR has established 10 programs on Indian reservations in Nevada, Arizona and California. HMR supports program services through its non-profit branch, the HMR Health Foundation, for a population which might not have had the opportunity to participate in a high-risk program because of costs and availability.

Through the strong commitment of the staff of the HMR Feasting Programs on the Indian reservations, patients are receiving the highest quality care.

Health Management Resources

Outpatient Health Program

59 Temple Place
Suite 704
Boston, MA 02111

(617) 357-9876

1103935

Complaint

116 F.T.C.

EXHIBIT B-4

Old Road to Nine Acre Corner
Concord MA 01742-4166
(508) 369-1400

FOR IMMEDIATE RELEASE

CONTACT: MICHELE CORKERY
357-9876

Emerson Hospital in Concord will hold a FREE EDUCATIONAL ORIENTATION on "Lifetime Weight Management" on January 5th from 5:30 to 7:30 p.m. The orientation will introduce participants to a medically-supervised fasting and weight management program to begin in late January at the hospital.

Emerson Hospital internist and endocrinologist, Dr. Melvyn Kramer, M.D., Medical Director for the new program, will discuss the risk factors associated with being overweight and the medical implications of weight loss. Anita Cohen, Behavioral Health Educator, will explain why traditional diets fail over the long term and why once weight loss is achieved many people fail to maintain it. Studies show that of the three percent of dieters who reach their goal weight, more than 90 percent regain that weight in six to twelve months. "To be successful, people need to learn new behavioral skills and procedures to both lose weight and maintain it over the longterm," said Dr. Kramer.

The HMR Fasting Program combines effective medical, behavioral and educational methods for achieving and maintaining significant weight loss. HMR patients lose an average of 2.5-5 pounds per week. Every patient must be screened to determine medical eligibility. Then the patient is placed on a 520 calories a day nutritionally complete dieting supplement . . . reaches goal weight. To ensure the patient's health and well-being during the "fasting" stage of the program, medical monitoring is done weekly and lab tests are performed by-weekly.

Throughout the program, patients are required to attend weekly educational/behavioral group meetings where they learn to make simple lifestyle changes that reduce the amount of fat in their diets and increase their levels of physical activity. When patients reach goal weight, they join an 18 month maintenance program, where the lifestyle changes are reinforced.

"Unlike traditional weight loss programs, HMR realizes that patients all have individual eating styles," added Cohen. "You can be a snacker, weekend eater, night eater or binger and still maintain your weight. In addition, during the maintenance phase we do not have lists of forbidden or restricted foods. Instead we teach a calorie-balancing system where people learn to make their food choices in conjunction with their individual eating styles."

Since 1979, more than 150,000 patients have used the HMR supplement in over 400 medically-supervised programs in hospitals, medical schools, and medical practices across the U.S. Staff is comprised of physicians, nurses, dietitians and behavioral educators, who have expertise in developing and implementing high quality programs in behavioral medicine.

For more information or to make reservations for the free orientation at Emerson Hospital, call (508) 369-4211 or (617) 357-9876.

EXHIBIT C-1

HMR

ORIENTATION FOR PROSPECTIVE NEW PATIENTS

In a very real sense, the orientation is the most important part of your program. The goals are to present accurate information about the treatment you are offering and to convince attendees that this is the right program for them to lose weight and learn how to keep it off. Therefore, a major function of the orientation presentation is to "sell" the program. Remember: If the people attending the orientation do not join your program, you will not be able to help them.

Free orientations, held frequently, are the most efficient and effective way of enrolling patients who are interested in learning more about your program. If orientations are scheduled frequently, prospective patients will not have to wait to start the program. We have found that when patients are "ready" to join a weight loss program, they often become discouraged if they are required to wait. Thus, we recommend that you schedule a formal orientation each week. At least once each month arrange to have the medical director (or other program physician) take part in the orientation. At other times the R.N. can present the medical section. The weekly orientations are flexible and can be held for large groups, small groups, or individuals, as circumstances dictate. We recommend that the responsibility of presenting a comprehensive orientation be shared by the physician/nurse and an experienced health educator. A typical orientation for a large group will last approximately one and one-half hours. A small group or individual orientation will last approximately one hour.

The orientation should be seen as the first integral step in the treatment plan and not as an option that can be missed. It is a time when you are beginning to lay foundations that will increase patient compliance and success after they have joined. Although we always try to consider flexibility in accommodating patient needs, attendance is not a commitment to negotiate freely. To have a patient start the program with the sense that attendance is somewhat optional will undermine their commitment to this critical procedure. Therefore, we recommend serious discussion about how to rearrange their schedules to meet this commitment. Strongly address the issue of weekly attendance in the orientation. Problem-solve with prospective patients to avoid problems later on (e.g., patients can reschedule their vacations so that they do not miss the core groups, or patients who planned to be out of town before they knew the class schedule can sign up, join the program, get scheduled for their clinical and physical exams (if that is appropriate) and begin the program in the next clinic group that will start after they return.). As we mentioned, since the orientation is the first integral step in the treatment plan,

a clinic staff member talking to a prospective patient on the phone should explain to the individual who says, "I'm already sold - just start me in the next group," why the orientation is necessary and the benefit of hearing the entire program overview. All patients should attend an orientation, or they will miss program foundations and information.

The orientation should be informative and upbeat. The Presenters should be enthusiastic, convincing, and professional. The emphasis should be on what makes this program different from others and why this program is more likely to succeed for them than their past efforts. The style of all staff who are presenting should be relaxed and friendly, and those attending should be encouraged to ask questions at the end after they have heard the basic information. Even if a patient decides not to join the program, it is still our goal that they will leave the orientation better equipped to manage their weight by having learned at least some relevant information. Also remember that the more concrete, exciting, and hopeful you make the examples and facts in your orientation, the more likely it is that patients will join the program. Even those who do not join immediately will be more likely to join the program at a later date and talk positively about the program to others.

An outline of a typical patient orientation follows:

BEHAVIORAL OUTLINE/SCRIPT FOR PATIENT ORIENTATION

I. INTRODUCTION

Welcome everyone. Introduce yourself and other staff. (include why you do this work)

My job tonight is to convince you that this is the only program you should join: Why?

How many of you have lost weight before?

How many of you have gained your weight back?

One Time?

Two times or more?

This is not unusual. People have regained their weight sometimes 3 or 4 times before they come to us.

What we'll tell you tonight is that long term weight maintenance is "doable," We have the only successful program which teaches people the skills to lose weight and to keep it off.

Tonight we'll talk about:
Who we are, who is HMR
Why diets fail
We'll give you an overview of the program and answer questions
We'll explain the cost
We'll discuss the medical safety issues
We'll tell you what you need to do to start the program

II. HMR

*HMR is a National Health Care Company with over 300 programs in hospitals, medical schools and large medical practices.

*Unlike commercial programs, we offer close, competent medical supervision for those patients who require it.

*Our staff is full time. We're doctors, nurses, behavioral health educators, administrators.

*All staff receive intensive on-going training. For example, a BHE has over 200 hours of training per year.

*All staff work together on a team to support you during your visit each week as well as between your visits.

*In all article written for the Journal of the American Medical Association, (one of the most prestigious medical journals in the world), by three well-known and respected authorities on the treatment of obesity, it was stated the medically supervised very-low-calorie diets--combined with behavioral education and supervised by trained professionals--are recognized as one of the most effective forms of treatment for high-risk obesity. Of all such programs, HMR has data that are clearly superior to those published by others in the field. And HMR is the only provider of VLCD programs that gives ongoing training to all professional staff involved in the treatment of patients.

*Describe your own clinic site: How long have you been doing this program at your site.

*We are data based: we monitor our effectiveness and improve the program using national data.

III. HOW WE'RE DIFFERENT AND WHY DIETS FAIL

I'm going to talk about why your other diets have failed, and how we're different from other diet programs.

A. DATA

In commercial programs over 90% of people gain back all the weight they lose. Often they lose fewer than 15 lbs.

In our programs, less than 15% of our patients gain back all the weight they lose. Our average weight loss is 52.6 lbs, counting every patient who starts in the program.

B. WHY DIETS FAIL

They don't teach you how to keep weight off.

They ask you to make changes which are unnecessary and irrelevant to your weight maintenance.

For example they recommend:

Eat small portions

Eat 3 meals a day

Don't snack

"What other recommendations have been made to you by other programs? that may not be doable or are not necessary?" (Get participation from the group.)

Patients often tell us that they are told to:

Reduce stress in your life

Stop eating compulsively

Use small plates

Just "push away" from the table

Never eat chocolate

Just eat when you're hungry

These are not the kind of changes you need to learn to make. In fact, "How many of you know THIN people who snack or eat chocolate?"

So, to lose weight and keep it off you need to learn something else. Not only are the above recommendations not relevant, but they also can set you up to fail because they are not realistic for most people.

IV. WHAT WE WILL TEACH YOU

A. WE WILL TEACH YOU ABOUT FOOD CALORIES

Why? So you can learn how to keep off the weight you lose.
Weight maintenance is a calorie issue (calorie-balancing and -X).

Can I have a volunteer? How much weight do you hope to lose.

Possible answer: 50 lbs.

Women get 11 cals/lb/day $50 \times 11 = 550$ cals = calorie change needed to
maintain lower weight.

Men get 12 cals/lb/day $50 \times 12 = 600$ cals = calorie change needed to
maintain lower weight.

"How will you make these changes?"

We have a simple calorie system to help you make the changes that are easiest for
you -- changes that will reduce fat and reduce calories but NOT reduce the amount
of food you can eat.

Examples: (possible changes)

*Snacks: 35 cups of air popped popcorn vs. 1 cup peanuts

*Lunch: 2 turkey sandwiches vs. 1 pastrami sandwich
3 x week = 22 lbs. kept off a year

*Dinner Valle's Steak House example

Goal: Not eat less
 Not change eating style
 Eat more food for fewer calories
 Doable for a lifetime

B. WE'LL TEACH YOU ABOUT PHYSICAL ACTIVITY CALORIES

Fit into lifestyle, not become "athletes"

Example: *10 min. walk out of your house, 10 min. walk back
 3 x per day = 31 lbs. in a year kept off.

*2000 cals. per week (approximately 45 min.-hour per day) and records keep 76.6% of weight off after 18 months.

SUMMARY:

Overeating is normal.

People often may feel discouraged. We understand this.

We'll work with you throughout the hard times to keep you attending, to lower your fats and increase your physical activity through learning calories, record keeping.

We'll teach you weight maintenance long-term!

V. PHASES OF THE PROGRAM

Induction Phase

Weight loss phase

Transition

Weight Maintenance

A. Induction Phase: There are two parts to this phase

*HMR has always offered medical screening and quality medical supervision.

*Commercial programs do not provide this.

*The importance of having a program with a medical screening is that it enables you to find out what the appropriate program is for you to participate in.

First step: Patient orientation - "you are here."

Second step: Medical screening to determine status.

Unsupervised

Body Mass Index (BMI) less than 30 (ratio of height & weight). This is the technical measure we use. It generally means someone with less than 40-50 pounds to lose, depending on height.

No current risk factors.

Minimum of 800 calories/day.

*All three of the above must be satisfied to qualify the patient for the unsupervised program.

Supervised

BMI greater than or equal to 30.

Current risk factors.

520 calories/day.

*If any one of the above are present, the appropriate program is the medically supervised program.

B. Weight Loss Phase:

1. Our diet provides complete nutrition in a structure which helps people lose weight successfully.

There are two options for you.

The Very Low Calorie Diet (VLCD) and the Low Calorie Diet (LCD).

The Very Low Calorie Diet (VLCD):

- *Minimum of 520 calories per day including supplement only (chocolate, vanilla, chicken soup)

- *Medically supervised

- *HMR has more than 10 years of experience with this diet

- *Supplement only=No decisions (this is easier for many patients)

- *This option has the least number of calories with complete nutrition

The Low Calorie Diet (LCD):

- *Minimum of 800 calories per day in supplement only or supplement with HMR entrees

- *Medical supervision to be determined

- *Offers dinner entrees

- *Limits decisions-no grocery food (keeps it simple and easier than other food diets)

Both Diets are:

TIME-LIMITED-NOT FOREVER

SAFE/NUTRITIONALLY SOUND: 100 -150% OF RDAs

SIMPLE: Few decisions to be made

Hot or cold

Large volume or small volume

CONVENIENT: Glass, blender, microwave, boiling water

EFFECTIVE: 52.6 lbs average weight loss

Taste is excellent

Guaranteed weight loss on the diet

Sometimes patients are not sure which option they should choose. They should be advised to be less concerned with the option and more concerned with the use of basic program procedures (*e.g.*, are you coming in, keeping records, working with your health educator, etc.). It is the use of procedures which correlates with success.

2. HOW THE WEIGHT LOSS PHASE LOOKS

Attendance weekly and why this is important 90 minute behavioral group (starts you on the diet and keeps you on the diet)
Continuous support and phone follow-up
We're available evenings, weekends, hard times

3. WHAT IF YOU BREAK THE DIET?

It's not a "failure." We won't judge you.
We'll help you get back on the diet. You don't need to drop out.

C. TRANSITION PHASE:

The time between the VLCD or LCD and the Maintenance Phase. A gradual increase in calories and food choices

D. MAINTENANCE PHASE:

The most important phase
The time for skill development, practice for long term success.
Sixty minute groups
Flexible times
18 months to practice: successful weight management is a skill acquisition (like learning a sport)

Examples: Tennis example
Golf-swing example

Next: Medical Orientation: (Usually presented by the physician or nurse, see accompanying outline)

Next: Maintenance Patient Speaks:

Select a successful and articulate maintenance patient.
Coach him/her to speak about: what skills (s)he has learned in the program: how this program has been different from other weight loss programs in his/her experience; how (s)he experienced the fast; how critical maintenance is for success; and how supportive the staff has been.

Maintenance patients often present their sincere, heartfelt experiences which can be credible and convincing to prospective patients. In some cases, an experienced ongoing faster can take the place of a maintenance patient.

Next: Fees, Class Times: (Presented by the health educator, see accompanying script)

Next: Summary: Why Join

VI. SUMMARY:

WHY JOIN OUR PROGRAM

ASK "WHY JOIN?"

*We have a dedicated, full time continually trained staff whose only job is to support you to lose your weight and keep it off.

*We're data based so that we continue to improve our program.

*If you need medical supervision:

Our medical staff monitors your health and as you heard from Dr._____, many patients have reduced their coronary risk factors, lowered their blood pressure and decreased their need for blood pressure and diabetes medications.

*We have a program available for everyone, no matter how little or how much weight you wish to lose.

*What you can expect from us: our commitment to you: We care about the longevity and quality of your life. By losing weight now, you can increase both of these.

*What we will ask of you: THE THREE COMMITMENTS

(Note to educators: Refer to the What, Why, and How expansion on Attendance, Record Keeping, and Maintenance in "The General Program foundations, Fasting Foundations of Week 1")

1. Attend Weekly (and why this is important)

- A. To obtain the information you need
- B. For support
- C. For medical supervision, if necessary
- D. To obtain your supplement/entrees
- E. The data shows that people must attend in order to be successful

(Note: It is important that you spend enough time on this commitment so that patients understand how critical attendance is for their success). Please be sure to repeat the following sentence verbatim:

"WEEKLY ATTENDANCE IS IMPORTANT ENOUGH THAT WE HAVE A POLICY REGARDING THIS AND MAY NEED TO DISCONTINUE THE PROGRAM FOR PATIENTS WHO DON'T ATTEND."

2. Record Keeping (and why this is important)

"This is a tool to use that will help you learn self-management and also help us to coach you."

(Note: No further expansion on this commitment is really necessary.)

3. Attend Maintenance (and why this is important; very little expansion is necessary, because attendance has already been discussed.)

*CLOSING THE ORIENTATION:

1. Those who are ready to make your appointment, we have clinical times available; please see RN to make your first appointment.
2. If you have any questions or concerns before making your appointment, we will be happy to meet with you individually and address them.
3. Thank you for coming.

MEDICAL OUTLINE/SCRIPT FOR PATIENT ORIENTATION

- I. Introduction - introduce yourself and include information about your practice area and experience. Include your personal reasons for doing this type of work, e.g. frustration with trying to help patients in private practice lose weight and not having an effective method.

II. The health risks of obesity. Why lose weight?

NOTE: Remember that the people attending the orientation may present a range of weight loss needs from 10-100+ lb. The HMR program options offer an effective prevention and treatment for the health consequences of being overweight.

- A. The associated health risks include hypertension, diabetes, orthopedic problems, increased risk of developing cardiovascular disease, increased risk of stroke, complications with surgery and childbirth, cancers, and gout.
- B. Being 40 or more pounds overweight increases the risk of sudden death in the under age 65 population by 1200%.
- C. Two thirds of all diabetics are overweight. With weight loss, two thirds of diabetes would be eliminated.
- D. Hypertension develops up to 5-10 times more often in individuals who are 20% or more over ideal body weight.
- E. (Flipside) For those of you who have a smaller amount to lose, you may not have these health risks now. However, people tend to gain weight as they get older, and we recommend taking the weight off now to prevent these problems from developing.

III. Medical safety and effectiveness of the Very Low Calorie Diet

A. Why is it safe?

1. The quality of the VLCD

- a. Evolution: *early - total fasting or starvation which was unsafe; patients did not feel well and had no energy

*early 1970's - progressed to fasting with supplement but the quality of the products was inferior

*today - high quality supplements associated with medical supervision and effective education for people with 40-50 or more pounds to lose; high quality supplements at a higher calories level or combined with food entrees for people with smaller amounts of weight to lose.

- b. The VLCD is the treatment of choice if the following criteria are met:

- 1. The program is medically supervised.
- 2. The program includes an intensive and effective educational component.
- 3. The program uses a high quality dietary supplement which provides protein with a superior amino acid profile and meets all of the Recommended Daily Allowances for nutrients.

c. Nutritional content

1. High quality protein derived from milk and egg white with a superior amino acid profile.
 2. 79 grams of carbohydrate, more than any of the leading, supplements, preserves muscle tissue and reduces nutrient loss; keeps energy level up.
 3. 150 % of the RDA for most nutrients.
 4. Taste is preferable to other products.
2. The medical supervision makes it safe.
- a. Some people will not be able to be on the low calorie diet right now because of contraindications - pregnancy or lactation. Some medical conditions will need to be evaluated individually such as recent heart attacks or strokes, recent surgeries, kidney disease, etc. but individuals with these conditions probably can participate on the diet.
 - b. Every individual receives initial screening including blood tests and health history to determine if he/she needs medical supervision. Anyone who is more than 40-50 lb. overweight will need medical supervision, but people who have less weight to lose may not need medical supervision if they do not have health risks.
 - c. If you do not require medical supervision, you will be taking a minimum of 800 calories a day of the supplement or the supplement and HMR entrees. You will have an appointment with the nurse for baseline lab work and a health history review and the physician and nurse will review these and make the decision that you can diet without medical supervision.
 - d. If you need medical supervision because of your weight or medical conditions, you will receive a complete physical exam before starting and will see the physician and nurse weekly, have blood drawn every 2 weeks and periodic EKGs done.
 - e. Each individual must take the recommended amount of supplement or supplement and entrees in order to get adequate nutrition and be medically safe. So that we know that you always have enough supplement to take the recommended amount, we require that you purchase 2 boxes each week if you are on the VLCD.
 - f. Each individual must attend every week for the Behavioral class and medical supervision. As has been mentioned before in this orientation we cannot

stress enough how critical your attendance is whether you are medically supervised or not.

- g. The staff are on call for any medical problems that are related to the diet.
 - h. We will work cooperatively with your primary care physician and send periodic letters with lab test results.
- B. Why is it effective?
- 1. Safe, rapid weight loss (3-6 lbs. per week for people on VLCD)
(2-4 lbs. per week for people on LCD)
 - 2. Significant health benefits
 - a. Decrease blood pressure and reduce or eliminate medicines.
 - b. Decrease blood glucose and reduce or eliminate insulin.
 - c. Reduce risk of heart disease by reducing cholesterol and triglyceride levels.
 - d. Improve arthritis by reducing stress on joints.

IV. Possible Side Effects (The major side effect is becoming healthier!)

- A. Intro statement: Benefits of losing weight and keeping it off far outweigh the risk of developing any of the possible side effects I'm about to present. You can always expect some physical changes whenever you diet, and you may have experienced some of these in the past.
- B. The most common are fairly simple to prevent or manage:
- 1. Bowel changes - constipation or diarrhea
 - 2. Dizziness
 - 3. Headache
 - 4. Fatigue

These physical changes are fairly simple to prevent or manage by taking plenty of fluids (2-3 quarts/day) and taking additional fiber in the form of bran or metamucil.

C. Less common

- 1. Temporary hair thinning may occur after more than 40 lbs. of weight loss and will reverse after refeeding.
- 2. Gallbladder problems (Suggested Statement To Make):
There is a short term increased risk for developing gallbladder problems. People who are overweight are at increased risk for gallbladder disease and

when people are dieting (no matter what kind of diet) they experience an increased risk of developing gallstones. However, by losing the weight, the overall risk of developing gallbladder disease is much reduced. We manage this possible side effect by recommending careful, supervised refeeding, slow introduction to foods, and caution about eating foods with high fat.

V. Summary

- A. Obesity carries significant medical risks.
- B. The VLCD is the treatment of choice and it is safe and effective with medical screening and supervision. The VLCD and LCD programs are successful because they combine complete nutrition with lifestyle change and risk factor management education.
- C. What makes this program different is how effective it is in teaching you how to keep the weight off.

OPERATIONS SCRIPT FOR PATIENT ORIENTATION

Many people are not aware of their medical risk factors when they go on a diet. HMR performs an assessment of your medical condition as a part of the induction to the program. As you know, commercial programs do not generally do any screening or medical tests prior to enrollment nor do they provide ongoing medical monitoring of their clients. Many of those people do not even know they have a serious medical condition. This is one of the reasons many of the commercial programs are under investigation by the congressional subcommittee in Washington, D.C.

Insert a similar story: For example, one of our clients female, 30 years old, 60 pounds overweight, discovered diabetes on induction. She was cleared by our medical director to start the Very Low Calorie Diet with medical supervision. No medications were required, she lost the weight and is doing fine

HMR HAS TWO DISTINCTIONS: (USE THE CHARTS IF AVAILABLE)

MEDICALLY SUPERVISED
Min. 520 cal/day
Supplement or Suppl/Entrees

MEDICALLY UNSUPERVISED
Min. 800 cal/day
Supplement or Suppl/Entrees

INDUCTION

You will have a medical screening tailored to your specific medical needs. If you are over 30% BMI, you will have a complete blood chemistries, EKG, comprehensive physical examination. If you are below 30% BMI, you will have blood chemistries done. The fees will be based on the services rendered.

Above 30% BMI \$190.00 Induction, below 30% BMI \$235.00 induction with Services included. More of the fees are paid up front in the \$235.00 charge. I'll explain more fully:

WEIGHT LOSS PHASE

The weight loss phase includes weekly weigh-in, and weekly 90 minute educational group. Medically supervised patients are seen by the program RN and MD weekly and have blood chemistries every other week, EKG's approximately every 35 lbs. of weight loss/or/12 weeks.

Insurance coverage is also a factor for most people (medically monitored) reducing the cost of the program. According to a recent survey 63.5% of our people in the program are receiving insurance reimbursement (from 80-100%).

Some insurance companies provide reimbursement for patients with medical diagnoses such as diabetes or hypertension. Insurance carriers are inconsistent regarding claim payments for weight management. Due to the wide variety of insurance coverages, each patient is responsible for obtaining insurance reimbursement from his/her insurance company. HMR will help by providing necessary letters, reports and physician referral letters. Submission of the charges is really the only way to find out if you will receive insurance reimbursement. (STORY) I had two patients who both had the same insurance and same diagnosis. One was covered, one was not. We made several submissions of letters and information and finally they did cover the patient.

Often it can take time and patients should be viable for several weeks in waiting for insurance reimbursement to occur. We do not accept Medicaid patients at this time. We also have a national agreement with Travelers as a weight management provider. However, all the same requirements must be met. (i.e. Diagnosis, contract differs from individual to individual.)

The weekly visit (including blood work) is \$65.00 per week. This is paid monthly (or our 4 week cycle we call it). This system is set up to aid with attendance. As you may have guessed, attendance in any weight management program is critical for successful weight loss and weight management. It is for that reason, missed

visits are not credited and no medical receipts are given. This can effect your being reimbursed since you will have paid for the service. It is HMR's attendance practice and we are firm about it. Missed visits must be made up within the week. Serious medical absences will be accepted. HMR can get these successful statistics and one of the reasons is the commitment around attendance.

DIET

Average cost per meal is \$1.40-3.50 depending on if you are taking supplement or entrees, about \$7-14.00 per day. All supplement and entrees are purchased and dispensed weekly. That \$1.40-3.50 per meal is your complete diet. That makes it convenient, no additional shopping and they travel with you great for work or travel. You will be spending less on food on this program than you are now. According to the USDA, the average working adult spends about \$72.00 per week on food and food related items. This may be subject to regional difference, but when you start to add up the 3 dinners out, lunches, wine with dinner, etc. you can see where it is not surprising some of our groups tell us they actually saved money during the weight loss phase.

MAINTENANCE

Our maintenance phase of 18 months is designed for your long term success in weight management. The maintenance phase of the program is critical, especially for those with significant amounts of weight to lose and keep off. If you are transitioning from the medically monitored weight loss to maintenance (goal weight) you will be paying \$250.00 per month (every 4 weeks). You pay that fee for 4 months and then you are totally paid up for the remaining 14 months. In this way you can attend as often as you like.

According to recent patient surveys most patients have tried at least 3 other programs and may have been unsuccessful in keeping all the weight off.

We are sure that with our coaching and support and individual focus we can help you become successful in keeping your weight off. We will work with you on teaching you how to keep the weight off and practice some simple lifestyle changes. You learn about shopping in grocery stores, reading labels, calculating your physical activity, etc. Weight management is a skill acquisition.

The unsupervised maintenance phase is a minimum of six months. We offer an incentive for the unsupervised maintenance patient \$100 off the regular \$300.00 fee if the amount is paid in full at the induction phase. Again, the unsupervised maintenance term is 6 months. Having worked with hundreds (or whatever your local experience is) of patients we are confident that we have a maintenance

program that can be tailored to your needs. Some patients want to have a longer term commitment and we can accommodate that.

In Summary, the HMR program can cost less than commercial programs who offer less services. We have successful patient data unrivaled by any other program. In addition, as I mentioned, HMR can often be covered by insurance companies.

RECOMMENDATIONS:

1. Offer discounts to multiple family members
2. Offer discounts to hospital/center you work with
3. Note tax deduction discount can often apply
See the orientation packet materials.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof and the respondent having been furnished thereafter with a copy of a draft of 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 respondent with violation of the Federal Trade Commission Act and,

The respondent, its attorneys, 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 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 the respondent has 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, 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 Health Management Resources Corp., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada, with its office and principal place of business at 59 Temple Place, Boston, MA.

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

DEFINITION

For purposes of this order, “*competent and reliable scientific evidence*” shall mean those tests, analyses, research, studies, surveys or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant profession or science to yield accurate and reliable results.

I.

It is ordered, That respondent HMR, a Nevada corporation, its successors and assigns, officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, or sale of any weight loss or weight control product, program or service, in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, regarding the safety of any very-low-calorie diet (“VLCD”) program (providing 800 calories or less per day), unless respondent clearly and prominently discloses in close proximity to any such representation that physician monitoring is required to minimize the potential for health risks;

B. Misrepresenting any health risk of any VLCD diet program;

C. Making any representation that the HMR VLCD program is widely accepted by the medical profession as a whole or is considered to be the preferred treatment by most medical experts, or making any other representation regarding the extent to which a diet program, or any aspect thereof, is accepted, recognized or preferred by medical experts unless, at the time of making any such representation, respondent possesses and relies upon a reasonable

basis consisting of competent and reliable evidence substantiating any such representation;

D. Misrepresenting the likelihood that patients in any of respondent's diet programs will regain all or any portion of lost weight;

E. Making any representation, directly or by implication, about the success of patients on any diet program to achieve or maintain weight loss or weight control unless, at the time of making any such representation, respondent possesses and relies upon a reasonable basis consisting of competent and reliable scientific evidence substantiating the representation, *provided, however*, that for any such representation that:

1) Any weight loss achieved or maintained through any diet program is typical or representative of all or any subset of patients using the program, said evidence shall, at a minimum, be based on a representative sample of: (a) all patients who have entered the program, where the representation relates to such persons; or (b) all patients who have completed a particular phase of the program or the entire program, where the representation only relates to such persons, and

2) Any weight loss is maintained long-term, said evidence shall, at a minimum, be based upon the experience of patients who were followed for a period of at least two years after completion of respondent's program (including any periods of participation in active maintenance); and

3) Any weight loss is maintained permanently, said evidence shall, at a minimum, be based upon the experience of patients who were followed for a period of time after completing the program that is either: (a) generally recognized by experts in the field of treating obesity as being of sufficient length to constitute a reasonable basis for predicting that weight loss will be permanent or (b) demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction;

F. Representing, directly or by implication, that any patients of any diet program have successfully maintained weight loss, unless

respondent discloses, clearly and prominently, and in close proximity to such representation:

(1) The following information:

(a) The average percentage of weight loss maintained by those patients,

(b) The duration, over which the weight loss was maintained, measured from the date that patients ended the active weight loss phase of the program, *provided, however*, that if any portion of the time period covered includes participation in respondent's maintenance program(s) that follows active weight loss, such fact must also be disclosed, and

(c) If the patient population referred to is not representative of the general patient population for that program, the proportion of the total patient population in respondent's programs that those patients represent, expressed in terms of a percentage or actual numbers of patients, or the statement: "HMR makes no claim that this [these] result[s] is [are] representative of all patients in the HMR program;" and

(2) The statement:

"For many dieters, weight loss is temporary." *Provided, however*, that, respondent shall not represent, directly or by implication, that the above-quoted statement does not apply to dieters in respondent's diet programs;

G. Making any representation about the efficacy of any other diet program or programs, unless at the time of making such representation, respondent possesses and relies upon a reasonable basis for making such representation. Such reasonable basis shall consist of a competent and reliable scientific study or studies of such other diet program or programs substantiating the representation;

H. Making comparisons between the efficacy of respondent's diet program or programs and the efficacy of any other diet program or programs, unless at the time of making such representation, respondent possesses and relies upon a reasonable basis for making

such representation. Such reasonable basis shall consist of a competent and reliable scientific study or studies substantiating the representation in terms of both the efficacy of respondent's diet program or programs and the efficacy of the diet program or programs with which the comparison is made.

II.

It is further ordered, That respondent 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(s), the creation or dissolution of subsidiaries, the filing of a bankruptcy petition, or any other change in the corporation(s) that may affect compliance obligations arising out of this order.

III.

It is further ordered, That respondent shall maintain for a period of three (3) years after the date the representation was last made, and make available to the Federal Trade Commission staff upon request for inspection and copying, all materials possessed and relied upon to substantiate any claim or representation covered by this order, and all test reports, studies, surveys or information in its possession or control or of which it has knowledge that contradict, qualify or call into question any such claim or representation.

IV.

It is further ordered, That respondent and its successors or assigns, shall forthwith distribute a copy of this order to each of its officers, agents, representatives, independent contractors and employees, including participating hospitals or clinics, that are engaged in the preparation and placement of advertisements or promotional materials, who communicate with patients or prospective patients, or who have any responsibilities with respect

to the subject matter of this order, and, for a period of ten (10) years from the date of entry of this order, distribute same to all of respondent's future officers, agents, representatives, independent contractors and employees having said responsibilities.

V.

It is further ordered, That respondent and its successors or assigns shall, within thirty (30) days after service of this order, advise physicians, hospitals and clinics using the HMR diet program that advertising previously furnished by respondent for their use, and brochures, pamphlets, booklets and other materials previously provided by respondent to physicians, hospitals and clinics for dissemination to patients and prospective patients, shall not be further used by those physicians, hospitals and clinics where that advertising or other materials would violate this order. If, after providing the notification required by the first sentence in this paragraph, respondent becomes aware that any physician, hospital or clinic using the HMR diet program, uses advertising or other materials previously furnished by respondent that would violate this order, respondent shall again communicate with that physician, hospital or clinic in an attempt to ensure that such advertising or other materials shall not be further used by said physician, hospital or clinic.

VI.

It is further ordered, That respondent and its 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.

Commissioner Owen dissenting with respect to the numerical disclosure requirements for short radio and television advertisements.

IN THE MATTER OF

DEMERT & DOUGHERTY, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3456. Complaint, Aug. 17, 1993--Decision Aug. 17, 1993*

This consent order prohibits, among other things, an Illinois-based corporation, that manufactures and sells consumer hair-care products, from making unsubstantiated environmental representations about any product it markets, whether under its own name or a private label.

Appearances

For the Commission: *C. Steven Baker and John C. Hallerud.*

For the respondent: *Mitchell Goldsmith, Shefsky & Froelich, Ltd., Chicago, IL.*

COMPLAINT

The Federal Trade Commission, having reason to believe that DeMert & Dougherty, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated 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. Respondent DeMert & Dougherty, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its office and principal place of business at Five Westbrook Corporate Center, Suite 900, Westchester, Illinois.

PAR. 2. Respondent is, and has been, engaged in the business of manufacturing, offering for sale, promoting, distributing and advertising certain consumer hair care products to the public,