

Complaint

IN THE MATTER OF

**OBSTETRICS AND GYNECOLOGY MEDICAL
CORPORATION OF NAPA VALLEY, ET AL.**CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-4048; File No. 0110153
Complaint, May 14, 2002--Decision, May 14, 2002*

This consent order addresses agreements among Respondent Obstetrics & Gynecology Medical Corp. of Napa Valley ("OGMC") – a for-profit corporation and a single-specialty independent practice association ("IPA") composed of virtually all of the OB/GYNs with active medical staff privileges at the two general acute care hospitals in Napa County, California – and its Respondent shareholders concerning prices and other terms of dealing with payors. The order, among other things, prohibits the respondents from entering into, participating, or facilitating: (1) any agreement to negotiate on behalf of any physicians with any payor or provider; (2) any agreement to deal or refuse to deal with any payor or provider; or (3) any agreement regarding any term on which any physicians deal, or are willing to deal, with any payor or provider. The order also prohibits the respondents from attempting to engage in – or from encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any person to engage in – any action that would violate the order. In addition, the order requires Respondent OGMC to dissolve itself.

Participants

For the Commission: *Sylvia Kundig, Lisa Rosenthal, Thomas Dahdouh, John P. Wiegand, Erika Wodinsky, Jeffrey Klurfeld, Rendell A. Davis, Jr., Daniel P. Ducore, Louis Silvia, Jr., Thomas R. Iosso and Mary T. Coleman.*

For the Respondent: *Frank E. Gamma, Glenn Stover, and Joel S. Goldman, Hanson, Bridgett, Marcus, Vlahos & Rudy.*

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 ("Commission"), having reason to

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believe that Obstetrics and Gynecology Medical Corporation of Napa Valley, a California corporation (“OGMC”), Bryan Henry, M.D., R. Bruce Scarborough, M.D., Anthony King, M.D., Dario Gambetta, M.D., Jerome Solomon, M.D., and Cheryl Henry, M.D. (collectively the “physician respondents”) have violated the provisions of said Act, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

RESPONDENTS

PARAGRAPH 1: OGMC is a professional corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 1100 Trancas Street, Suite #209, Napa, CA, 94558.

PARAGRAPH 2: The physician respondents are individuals who are or have been engaged in the private practice of obstetrics and gynecology for a fee in Napa County, CA. Except to the extent that competition has been restrained as alleged herein, some or all of the physician respondents have been, and are now, in competition with each other for the provision of physician services. The physician respondents are, or were, the shareholders of OGMC. Their respective business addresses are as follows:

- a. Bryan Henry, M.D., 1530 Railroad Avenue, St. Helena, CA 94574;
- b. R. Bruce Scarborough, M.D., 1100 Trancas Street, #209, Napa, CA 94558;
- c. Anthony King, M.D., 980 Trancas Street, #11, Napa, CA 94558;
- d. Dario Gambetta, M.D., 1530 Railroad Avenue, St. Helena, CA 94574;

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- e. Jerome Solomon, M.D., 1100 Trancas Street, #351, Napa, CA 94558;
- f. Cheryl Henry, M.D., 975 Sereno Dr., Vallejo, CA 94589.

PARAGRAPH 3: The physician respondents are, or have been, members of the medical staffs of the two general acute care hospitals in Napa County, CA. They constitute virtually all of the obstetricians and gynecologists with active medical staff privileges at both hospitals.

JURISDICTION

PARAGRAPH 4: The general business practices of OGMC and the physician respondents, including the acts and practices alleged herein, are in commerce or affect commerce as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

PARAGRAPH 5: Respondent OGMC is a for-profit corporation that also engages in substantial activities for the pecuniary benefit of its physician members. At all times relevant to the complaint, OGMC is and has been organized in substantial part for the profit of its members, and therefore is a corporation within the meaning of Section 4 of the FTC Act, 15 U.S.C. § 44.

BUSINESS ACTIVITIES

PARAGRAPH 6: Physicians often contract with health plans that reimburse, purchase, or pay for health care services provided to other persons. Such health plans include, but are not limited to, health maintenance organizations (“HMOs”) and preferred provider organizations. Contracts between physicians and health plans typically establish the terms and conditions, including price terms, under which the physicians will render services to the enrollees of the health plans. Physicians entering into such contracts often agree to reductions in their compensation to obtain access to additional patients. These contracts may permit health

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plans to lower their costs and thus reduce the cost of medical care for their enrollees.

PARAGRAPH 7: Physicians organize their practices under several models, including, but not limited to, sole proprietorships, partnerships, and professional corporations (collectively “physician entities”). Absent agreements among competing physician entities on the terms on which they will provide services to the enrollees of health plans, competing physician entities decide unilaterally whether to enter into contracts with health plans to provide services to the health plan enrollees and what prices and other terms and conditions they will accept under such contracts.

PARAGRAPH 8: Physician entities often are paid for the services they provide to health plan enrollees either by contracting directly with a health plan or by participating in independent practice associations (“IPAs”). Some physician entities that participate in IPAs share the risk of financial loss with other participants if the total costs of services provided to health plan enrollees exceed the anticipated volume of service. In addition, when the physician entities share financial risk, they typically agree to follow guidelines relating to quality assurance, utilization review, and administrative efficiency.

PARAGRAPH 9: Napa Valley Physicians’ Plan, A Medical Group Inc. (“Napa Valley Physicians”) was a risk-sharing IPA, as described in Paragraph 8. Among other things, Napa Valley Physicians contracted with HMOs to provide services to HMO enrollees, most of whom lived or worked in Napa County, CA. Many physicians in Napa County participated in, or had contracts with, Napa Valley Physicians to provide services to the HMO enrollees under Napa Valley Physicians’ contracts with HMOs. The physician respondents shared risk under their agreements with Napa Valley Physicians and provided services to HMO enrollees under contracts negotiated by Napa Valley Physicians with health plans.

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PARAGRAPH 10: Beginning in 1998, the physician respondents became dissatisfied with their level and timeliness of reimbursement from Napa Valley Physicians and expressed that dissatisfaction to Napa Valley Physicians. In early 1999, each physician respondent concurrently terminated his or her relationship with Napa Valley Physicians. After their terminations, the physician respondents continued to provide services to HMO enrollees through Napa Valley Physicians on a fee-for-service basis. Once the physician respondents began providing services on a fee-for-service basis, they no longer shared financial risk. Although the physician respondents consulted legal counsel in late 1999 about forming an entity in which the physician respondents would share financial risk regarding agreements with Napa Valley Physicians, no such agreement was executed.

PARAGRAPH 11: In February 2000, the physician respondents formed OGMC to, among other things, promote the collective economic interests of the physician respondents by increasing their negotiating power with Napa Valley Physicians. The physician respondents knew that health plans needed to have the services of the physician respondents, whether through Napa Valley Physicians, through another IPA, or through direct contract, in order to be able to offer a viable health plan in Napa County.

ACTS AND PRACTICES

PARAGRAPH 12: Prior to the formation of OGMC, and continuing into 2001, the physician respondents agreed with some or all of the other physician respondents to refuse to contract individually with Napa Valley Physicians or any health plan.

PARAGRAPH 13: Prior to the formation of OGMC, and continuing into 2001, while attempting to negotiate a contract with Napa Valley Physicians under which the physician respondents would share financial risk, the physician respondents agreed on the fees they would charge to Napa Valley Physicians or

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health plans for obstetrical and gynecological services provided under agreements between Napa Valley Physicians and health plans. After the formation of OGMC, the physician respondents agreed on the fees they would charge, as members of OGMC, to Napa Valley Physicians and/or health plans for obstetrical and gynecological services provided under agreements between OGMC and Napa Valley Physicians and between OGMC and health plans. On numerous occasions, the physician respondents met to discuss collectively and to vote on short-term and long-term fee-for-service and risk contract proposals. In many instances, the physician respondents agreed on such contract proposals, which included fee-for-service price terms.

PARAGRAPH 14: Prior to the formation of OGMC, and continuing into 2001, the physician respondents agreed to boycott and did boycott Napa Valley Physicians in order to coerce Napa Valley Physicians to meet the physician respondents' demands for higher fees for services rendered to enrollees of HMOs that contracted with Napa Valley Physicians.

PARAGRAPH 15: Respondent OGMC, acting as a combination of its members, and in conspiracy with its members, has acted to restrain competition by, among other things, facilitating, entering into, and implementing agreements among its members, express or implied, to fix price and other competitively significant terms of dealing with Napa Valley Physicians and/or health plans, and refusing to deal with Napa Valley Physicians and/or health plans except on collectively agreed-upon terms.

PARAGRAPH 16: The physician respondents, acting as a combination, and in conspiracy with one another, have acted to restrain competition by, among other things, facilitating, entering into, and implementing agreements among themselves, express or implied, to fix price and other competitively significant terms of dealing with health plans, and to refuse to deal with Napa Valley Physicians and/or health plans except on collectively agreed-upon terms.

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PARAGRAPH 17: The physician respondents have not clinically or financially integrated their practices to create efficiencies sufficient to justify the acts and practices described in Paragraphs 12 through 16.

EFFECTS OF RESPONDENTS' ACTS AND PRACTICES

PARAGRAPH 18: As a consequence of the respondents' conduct, described in Paragraphs 12 through 16, Napa Valley Physicians did not have sufficient providers of obstetrical and gynecological services to serve adequately the HMO enrollees of the health plans with which it had contracted. Because Napa Valley Physicians was unable to ensure adequate obstetrical and gynecological services to HMO enrollees, certain health plans discontinued providing HMO coverage in Napa County. Consequently, HMO enrollees had to find alternative health plan coverage.

PARAGRAPH 19: The conduct described in Paragraphs 12 through 16 has had, or has the tendency to have, the effect of restraining trade unreasonably and hindering competition in the provision of physician services in Napa County in the following ways, among others:

- A. Price and other forms of competition among the physician respondents has been unreasonably restrained;
- B. Prices for physician services have increased;
- C. Health plans, employers, and consumers have been deprived of the benefits of competition in the purchase of physician services; and
- D. Employers and individual consumers were deprived of the benefits of competition among health plans.

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VIOLATION OF THE FTC ACT

PARAGRAPH 20: The combination, conspiracy, acts, and practices described above constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such acts and practices, or the effects thereof, will continue or recur in the absence of appropriate relief.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this fourteenth day of May, 2002, issues its complaint against OGMC and the physician respondents.

By the Commission, Commissioner Anthony not participating.

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DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of certain acts and practices of respondents named in the caption hereof (“Respondents”), and Respondents having been furnished thereafter with a copy of the draft of Complaint that the Commission staff proposed to present to the Commission for its consideration and which, if issued, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order to Cease and Desist (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, 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 Respondents have violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comment received, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues the following Order:

1. Respondent Obstetrics and Gynecology Medical Corporation of Napa Valley is a professional corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its office and principal place

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of business located at 1100 Trancas Street, Suite # 209, Napa, CA 94558.

2. The other Respondents are, or have been, members of Obstetrics and Gynecology Medical Corporation of Napa Valley, are physicians licensed to practice medicine in the State of California, and are engaged in the private practice of obstetrics and gynecology for a fee in Napa Valley, California. Their respective business addresses are as follows:
 - a. Bryan Henry, M.D., 1530 Railroad Avenue, St. Helena, CA 94574;
 - b. R. Bruce Scarborough, M.D., 1100 Trancas Street, #209, Napa, CA 94558;
 - c. Anthony King, M.D., 980 Trancas Street, #11, Napa, CA 94558;
 - d. Dario Gambetta, M.D., 1530 Railroad Avenue, St. Helena, CA 94574;
 - e. Jerome Solomon, M.D., 1100 Trancas Street, #351, Napa, CA 94558;
 - f. Cheryl Henry, M.D., 975 Sereno Dr., Vallejo, CA 94589.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

Decision and Order

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “OGMC” means Obstetrics and Gynecology Medical Corporation of Napa Valley, its officers, directors, employees, agents, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by OGMC, and the respective officers, directors, employees, agents, representatives, successors, and assigns of each.
- B. “Physician Respondents” means Bryan Henry, M.D., R. Bruce Scarborough, M.D., Anthony King, M.D., Dario Gambetta, M.D., Jerome Solomon, M.D., and Cheryl Henry, M.D.
- C. “Respondents” means OGMC and the Physician Respondents.
- D. “Payor” means any person that pays, or arranges for the payment, for all or any part of any physician services for itself or for any other person.
- E. “Person” means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.
- F. “Physician” means a doctor of allopathic medicine (“M.D.”) or a doctor of osteopathic medicine (“D.O.”).
- G. “Participate” in an entity means (1) to be a shareholder, owner, or member of such entity, or (2) to provide services, agree to provide services, or offer to provide services, to a payor through such entity. (This definition also applies to all tenses and forms of the word “participate,” including, but not limited to, “participating,” “participated,” and “participation.”)

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- H. “Principal Address” means either (1) primary business address, if there is a business address, or (2) primary residential address, if there is no business address.
- I. “Qualified risk-sharing joint arrangement” means an arrangement to provide physician services in which:
 - 1. all physicians who participate in the arrangement share substantial financial risk through such participation and thereby create incentives for these physicians to jointly control costs and improve quality by managing the provision of physician services, such as risk-sharing involving:
 - a. the provision of physician services to payors at a capitated rate,
 - b. the provision of physician services for a predetermined percentage of premium or revenue from payors,
 - c. the use of significant financial incentives (*e.g.*, substantial withholds) for physicians who participate to achieve, as a group, specified cost-containment goals, or
 - d. the provision of a complex or extended course of treatment that requires the substantial coordination of care by physicians in different specialties offering a complementary mix of services, for a fixed, predetermined payment, where the costs of that course of treatment for any individual patient can vary greatly due to the individual patient’s condition, the choice, complexity, or length of treatment, or other factors; and
 - 2. any agreement concerning reimbursement or other terms or conditions of dealing entered into by or within the

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arrangement is reasonably necessary to obtain significant efficiencies through the joint arrangement.

- J. “Qualified clinically-integrated joint arrangement” means an arrangement to provide physician services in which:
1. all physicians who participate in the arrangement participate in active and ongoing programs to evaluate and modify the practice patterns of, and create a high degree of interdependence and cooperation among, these physicians, in order to control costs and ensure the quality of services provided through the arrangement; and
 2. any agreement concerning reimbursement or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies through the joint arrangement.

II.

IT IS FURTHER ORDERED that Respondents, directly or indirectly, or through any corporate or other device, in connection with the provision of physician services in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, cease and desist from:

- A. Entering into, adhering to, participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding between or among any physicians:
1. To negotiate on behalf of any physician with any payor,
 2. To deal, refuse to deal, or threaten to refuse to deal with any payor, or
 3. Regarding any term, condition, or requirement upon which any physician deals, or is willing to deal, with any payor, including, but not limited to, price terms;

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- B. Attempting to engage in any action prohibited by Paragraph II.A. above; and
- C. Encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any person to engage in any action that would be prohibited if the person were subject to this Order.

PROVIDED HOWEVER that nothing in this Paragraph shall prohibit any agreement involving, or conduct by, Respondents that is reasonably necessary to form, participate in, or take any other action in furtherance of a qualified risk-sharing joint arrangement or a qualified clinically-integrated joint arrangement.

III.

IT IS FURTHER ORDERED that OGMC shall:

- A. Within ten (10) days after the date on which this Order becomes final, cease and desist from all business and all other activities of any nature whatsoever, except those activities that are required in order to comply with the terms of this Order or that are necessary to effect a winding up of OGMC's affairs and its dissolution;
- B. Within sixty (60) days after the date on which this Order becomes final, and prior to the dissolution provided for in Paragraph III.C. below, distribute by first-class mail a copy of this Order and the accompanying Complaint to:
 - 1. each physician who participates, or has participated, in OGMC;
 - 2. each officer, director, manager, and employee of OGMC;
 - 3. each payor who, at any time since January 1, 1999, has communicated to OGMC or to any Physician Respondent, or to whom OGMC or any Physician Respondent has communicated, with regard to any desire,

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willingness, or interest of such payor in contracting for physician services; and

4. Queen of the Valley Hospital, Napa, California, and St. Helena Hospital, Deer Park, California; and

- C. Dissolve itself within one hundred twenty (120) days after the date on which this Order becomes final.

IV.

IT IS FURTHER ORDERED that, if OGMC fails to comply with all or any portion of Paragraph III.B. of this Order within sixty (60) days after the date on which this Order becomes final, then Physician Respondent Bryan Henry, M.D. shall, within ninety (90) days after the date on which this Order becomes final, comply with those portions of Paragraph III.B. of this Order with which OGMC did not comply.

V.

IT IS FURTHER ORDERED that each Physician Respondent shall:

- A. Within thirty (30) days after the date this Order becomes final, deliver to OGMC a list of the names, addresses, and telephone numbers of each payor who, at any time since January 1, 1999, has communicated to the Physician Respondent, or to whom the Physician Respondent has communicated, with regard to any desire, willingness, or interest of such payor in contracting for physician services; and
- B. Take all actions necessary to effect dissolution of OGMC as required by this Order.

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VI.

IT IS FURTHER ORDERED that OGMC shall:

- A. Within ninety (90) days after the date on which this Order becomes final, and prior to the dissolution provided for in Paragraph III.C. above, file with the Commission a verified written report demonstrating how it has complied and is complying with this Order; and
- B. Notify the Commission at least thirty (30) days prior to any proposed change in OGMC, such as change of address, assignment, sale resulting in the emergence of a successor, or any other change in OGMC that may affect compliance obligations arising out of this Order.

VII.

IT IS FURTHER ORDERED that each Physician Respondent shall:

- A. Within sixty (60) days after the date this Order becomes final, every sixty (60) days thereafter in which OGMC is not dissolved, and within the thirty (30) days following dissolution of OGMC, file with the Commission a verified written report setting forth in detail the manner and form in which the Physician Respondent intends to comply, is complying, and has complied with this Order, including, but not limited to, a full description of his or her efforts to comply with Paragraph V. above; and
- B. File verified written reports one (1) year after the date this Order becomes final, and annually thereafter for three (3) additional years on the anniversary of the date this Order becomes final, and at such other times as the Commission may by written notice require, setting forth:
 - 1. in detail, the manner and form in which the Physician Respondent has complied with this Order, including, but

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not limited to, any information necessary to demonstrate such compliance, and

2. the name, address, and telephone number of each physician group in which the Physician Respondent has participated.
- C. Notify the Commission of any change in the Principal Address of the Physician Respondent within twenty (20) days of such change in address.

VIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, calendars, and other records and documents in their possession, or under their control, relating to any matter contained in this Order;
- B. Upon five (5) days' notice to OGMC and without restraint or interference from it, to interview officers, directors, or employees of OGMC; and
- C. Upon five (5) days' notice to any Physician Respondent, and without restraint or interference from such Physician Respondent, to interview the Physician Respondent or the employees of the Physician Respondent.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on May 14, 2022.

By the Commission.

Analysis

**Analysis of Agreement Containing Consent Order to Aid
Public Comment**

The Federal Trade Commission has accepted, subject to final approval, an agreement with Obstetrics & Gynecology Medical Corp. of Napa Valley and its shareholders (collectively "OGMC" or "proposed respondents") containing a proposed consent order. The proposed order settles charges that OGMC violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, by facilitating or implementing agreements among its members to fix prices and other terms of dealing with payors, and to refuse to deal with payors except on collectively-determined terms. The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify their terms in any way. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by the proposed respondents that they violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

The Complaint

The allegations in the Commission's proposed complaint are summarized below.

Respondent OGMC is a for-profit corporation and a single-specialty independent practice association ("IPA") composed of virtually all of the OB/GYNs with active medical staff privileges at the two general acute care hospitals in Napa County, California. OGMC's physicians had been members of Napa Valley Physicians ("NVP"), a multispecialty IPA in Napa County. An

Analysis

IPA is a vehicle through which physicians can contract with health plans to provide services to health plan enrollees. At times, physicians who participate in IPAs share the risk of financial loss with other participants if the total costs of services provided to patients exceed the anticipated volume of service. NVP was such a risk-sharing IPA. As is typical of such IPAs, NVP also provided quality assurance and utilization review.

Beginning in 1998, NVP's OB/GYNs became dissatisfied with the level and timeliness of reimbursement from NVP. The OB/GYNs resigned from NVP, and then in February 2000, formed OGMC to promote, among other things, their collective economic interests by increasing their negotiating power with NVP. Prior to the formation of OGMC, and continuing into 2001, these OB/GYNs agreed among themselves to refuse to contract individually with NVP or any health plan. During this time, the OB/GYNs also agreed on the fees they would charge, and to boycott NVP to coerce it to meet their fee demands. As a consequence of the proposed respondents' conduct, NVP did not have sufficient OB/GYNs to serve adequately the HMO enrollees under NVP's HMO contracts. NVP ceased doing business in early 2001, and some health plans discontinued providing HMO coverage in Napa County.

OGMC did not engage in any activity that might justify collective agreements on the prices its members would accept for their services. For example, the OB/GYNs have not clinically or financially integrated their practices to create efficiencies sufficient to justify their acts and practices. The proposed respondents' actions have restrained price and other forms of competition among OB/GYNs in Napa County, California, and thereby harmed consumers (including health plans, employers, and individual consumers) by increasing the prices for physician services.

The Proposed Consent Order

The proposed order is designed to prevent recurrence of the illegal concerted actions alleged in the complaint, while allowing

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the OB/GYNs to engage in legitimate joint conduct. The core prohibitions of the proposed order are contained in Paragraph II. Paragraph II.A prohibits the proposed respondents from entering into, participating, or facilitating: (1) any agreement to negotiate on behalf of any physicians with any payor or provider; (2) any agreement to deal or refuse to deal with any payor or provider; or (3) any agreement regarding any term on which any physicians deal, or are willing to deal, with any payor or provider.

Paragraph II.B prohibits the proposed respondents from attempting to engage in a violation of Paragraph II.A. Paragraph II.C prohibits them from encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any person to engage in any action that would be prohibited if the person were subject to the order.

A proviso to Paragraph II allows the proposed respondents to engage in conduct (including collectively determining reimbursement and other terms of contracts) that is reasonably necessary to operate any "qualified risk-sharing joint arrangement" or "qualified clinically-integrated joint arrangement." As defined in the proposed order, a "qualified risk-sharing joint arrangement" must satisfy two conditions. First, all physician participants must share substantial financial risk through the arrangement. (The definition of financial risk-sharing tracks the discussion of that term contained in the 1996 FTC/DOJ Statements of Antitrust Enforcement Policy in Health Care.) Second, any agreement on prices or terms of reimbursement must be reasonably necessary to obtain significant efficiencies through the joint arrangement.

A "qualified clinically-integrated joint arrangement" is defined as one in which the physicians undertake cooperative activities to achieve efficiencies in the delivery of clinical services, without necessarily sharing substantial financial risk. (This definition also reflects the analysis contained in the 1996 FTC/DOJ Statements of Antitrust Enforcement Policy in Health Care.) Under this analysis, participating physicians must establish a high degree of interdependence and cooperation through their use of programs to

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evaluate and modify their clinical practice patterns, in order to control costs and assure the quality of physician services provided. In addition, any agreement on prices or terms of reimbursement must be reasonably necessary to obtain significant efficiencies through the joint arrangement.

Paragraph III of the proposed order requires OGMC to dissolve. The remaining provisions of the proposed order impose obligations on the proposed respondents with respect to facilitating OGMC's dissolution; distributing the order and complaint to specified persons; and reporting information to the Commission. The order terminates 20 years after it issues.

Complaint

IN THE MATTER OF

FMC CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-4050; File No. 9810237

Complaint, June 12, 2002--Decision, June 12, 2002

This consent order addresses conduct engaged in by Respondent FMC Corporation, the largest manufacturer and seller in the world of microcrystalline cellulose ("MCC") – derived from purified wood cellulose and used primarily as a binder in the manufacture of pharmaceutical tablets – and Asahi Chemical Industry Co. Ltd., the second largest seller of MCC worldwide, and the largest supplier in Japan. The order, among other things, prohibits Respondent FMC from agreeing with competitors (1) to divide or allocate markets, customers, contracts, or geographic territories in connection with the sale of MCC, or (2) to refrain in whole or in part from producing, selling, or marketing MCC. The order also prohibits the respondent from inviting or soliciting such agreements not to compete. In addition, the order prohibits the respondent (1) for ten years, from serving as the United States distributor for any competing manufacturer of MCC, including Asahi Chemical, and (2) for five years, from distributing in the United States any other inactive ingredient used in the manufacture of pharmaceutical products that is manufactured by Asahi Chemical.

Participants

For the Commission: *Geoffrey M. Green, L. Barry Costilo, Veronica G. Kayne, Christopher T. Taylor, Louis Silvia, Jr. and Daniel O'Brien.*

For the Respondent: *Joseph A. Tate, Stephen A. Stack, Jr. and Michael L. Kichline, Dechert Price & Rhoads.*

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 ("Commission"), having reason to believe that FMC Corporation and Asahi Chemical Industry Co., Ltd., corporations, hereinafter sometimes collectively referred to