

Complaint

IN THE MATTER OF

WHITE SANDS HEALTH CARE SYSTEM, L.L.C., ET AL.

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

Docket C-4130; File No. 0310135

Complaint, January 11, 2005--Decision, January 11, 2005

This consent order, among other things, prohibits the respondents from entering into, participating in, implementing, or otherwise facilitating any combination, conspiracy, agreement, or understanding between or among any licensed health care professionals ("providers") -- including but not limited to physicians and nurse anesthetists -- (1) to negotiate on behalf of any provider with any payor; (2) to deal, refuse to deal, or threaten to refuse to deal with any payor; (3) regarding any term, condition, or requirement upon which any provider deals, or is willing to deal, with any payor, including, but not limited to, price terms; or (4) not to deal individually with any payor, or not to deal with any payor through any arrangement other than Respondent White Sands or Respondent Alamogordo Physicians. The order also prohibits the individual respondents, for three years, from negotiating with any payor on behalf of Respondent White Sands, Respondent Alamogordo Physicians, or any provider who participates or has participated in either of those respondents. In addition, the order requires each respondent, for three years, to notify the Commission at least sixty days before entering into any arrangement with any providers under which such respondent would act as their messenger or agent with payors regarding contracts.

Participants

For the Commission: *Steve Vieux, Aaron Hewitt, David R. Pender, Jeffrey W. Brennan, Daniel P. Ducore, and Louis Silvia.*

For the Respondents: *Robert L. Wilson, Jr., Smith Moore LLP.*

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Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that White Sands Health Care System, L.L.C. ("White Sands"), Alamogordo

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Physicians' Cooperative, Inc. ("Alamogordo Physicians"), Dacite, Inc. ("Dacite"), and James R. Laurenza, hereinafter referred to as "Respondents," have violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges in that respect as follows:

NATURE OF THE CASE

1. This matter concerns horizontal agreements among competing health care providers in the Alamogordo, New Mexico, area, to fix prices charged to health care plans and other third-party payors ("payors"), and to refuse to deal with payors except on collectively agreed upon terms. These health care providers, who constitute most of the health care providers in the Alamogordo area, orchestrated these price-fixing agreements and refusals to deal through the respondents. The respondents' conduct raised the price of health care services in the Alamogordo area.

RESPONDENTS

2. White Sands, a physician-hospital organization ("PHO"), is a for-profit limited liability company, organized, existing, and doing business under and by virtue of the laws of the State of New Mexico, with its principal address at 3310 N. White Sands Boulevard, Alamogordo, NM 88311. White Sands was formed in 1996, and consists of a non-profit hospital, Gerald Champion Regional Medical Center; Alamogordo Physicians, which is an independent practice association ("IPA"); and 31 non-physician licensed health care professionals, five of which are certified registered nurse anesthetists ("nurse anesthetists").

3. Alamogordo Physicians, an IPA consisting of 45 physicians in Alamogordo and other locations in Otero County, New Mexico, is a cooperative association, incorporated, organized, existing, and doing business under and by virtue of the laws of the State of New

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Mexico, with its principal address at P.O. Box 309, Alamogordo, NM 88310.

4. Dacite is a for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Wyoming, with its principal address at 106 Sweetbriar Lane, Louisville, KY 40207. Dacite provides consulting services, including managed care contracting, to White Sands.

5. James R. Laurenza is Dacite's founder and President, White Sands' General Manager, and White Sands' principal contract negotiator with payors. His principal address is 106 Sweetbriar Lane, Louisville, KY 40207.

THE FTC HAS JURISDICTION OVER RESPONDENTS

6. At all times relevant to this Complaint, White Sands, Dacite, and James R. Laurenza have been engaged in the business of contracting with payors, on behalf of White Sands' members, for the provision of medical services to persons for a fee.

7. Except to the extent that competition has been restrained as alleged herein, White Sands' nurse anesthetist members have been, and are now, in competition with each other for the provision of health care services in the Alamogordo area for a fee. Additionally, except to the extent that competition has been restrained as alleged herein, Alamogordo Physicians' physician members have been, and are now, in competition with each other for the provision of medical services in the Alamogordo area for a fee.

8. Alamogordo Physicians was founded by, is controlled by, and carries on business for the pecuniary benefit of its physician members. Accordingly, Alamogordo Physicians is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

9. Respondents' general business practices, including the acts

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and practices herein alleged, are in or affecting “commerce” as defined in the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

**OVERVIEW OF PHYSICIAN AND NURSE ANESTHETIST
CONTRACTING WITH PAYORS**

10. Alamogordo is in south-central New Mexico. The closest major cities to Alamogordo are Las Cruces, New Mexico, approximately 70 miles to the south; El Paso, Texas, approximately 90 miles to the south; Albuquerque, the largest city in New Mexico, is approximately 210 miles to the north.

11. White Sands’ nurse anesthetist members are licensed in the State of New Mexico as anesthesia specialists, and comprise all of the nurse anesthetists practicing in the Alamogordo area. All of White Sands’ nurse anesthetist members operate their own independent practices. There are no physician anesthesiologists in the Alamogordo area. Therefore, to be marketable in the Alamogordo area, a payor’s health insurance plan must have access to White Sands’ nurse anesthetist members.

12. Alamogordo Physicians’ physician members are licensed to practice allopathic or osteopathic medicine in the State of New Mexico, and engaged in the business of providing physician services to patients in the Alamogordo area. In addition, all of Alamogordo Physicians’ physician members are members of White Sands and account for approximately 80% of the physicians who independently practice in the Alamogordo area. To be marketable in the Alamogordo area, a payor’s health insurance plan must have access to a large number of primary care physicians and specialists who are members of White Sands.

13. Physicians and nurse anesthetists contract with payors to establish the terms and conditions, including price terms, under which they render services to the payors’ subscribers. Physicians and nurse anesthetists entering into such contracts often agree to lower compensation to obtain access to additional patients made

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available by the payors' relationship with insureds. These contracts may reduce payors' costs and enable them to lower the price of insurance, and thereby result in lower medical care costs for subscribers to the payors' health insurance plans. Absent agreements among them on the terms, including price, on which they will provide services to enrollees in payors' health care plans, competing physicians and competing nurse anesthetists decide individually whether to enter into payor contracts to provide services to their subscribers or enrollees, and what prices they will accept pursuant to such contracts.

14. The Medicare Resource Based Relative Value Scale ("RBRVS") is a system used by the Centers for Medicare and Medicaid Services to determine the amount to pay physicians for the services they render to Medicare patients. In general, payors in the Alamogordo area make contract offers to individual physicians or groups at a price level specified as some percentage of the RBRVS fee for a particular year (*e.g.*, "110% of 2003 RBRVS").

15. Contracts between payors and nurse anesthetists contain payment provisions based on procedure guidelines established by the American Society of Anesthesiologists ("ASA"). Under these guidelines, payment for most procedures is determined by multiplying an agreed upon dollar amount, or "conversion factor," by the sum of "ASA units." ASA units are divided into "procedure units" and "time units." The number of procedure units varies, depending on the type of procedure that the nurse anesthetist provides. One time unit is equal to fifteen minutes. For example, if a payor and nurse anesthetist agree to a conversion factor of \$40, and a procedure is worth six procedure units and takes 45 minutes (*i.e.*, 3 time units) to perform, then the payment is \$360 [$\$40 \times (6 + 3) = \360]. Payors in New Mexico negotiate the conversion factor with nurse anesthetists for the provision of anesthesia. For procedures related to pain management, payment mirrors the RBRVS approach described in paragraph 14 above.

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**WHITE SANDS NEGOTIATED PAYOR CONTRACTS ON
BEHALF OF ITS MEMBER PHYSICIANS AND NURSE
ANESTHETISTS**

16. Gerald Champion Regional Medical Center and Alamogordo Physicians organized White Sands in 1996 to “develop pricing policies and . . . negotiate and enter into Managed Care Contracts” on behalf of its members. Its business plan promotes the PHO as “enabl[ing] . . . physicians to be part of a delivery structure that will leverage the collective power of the members in obtaining more favorable reimbursement rates than could be negotiated . . . individually.” White Sands’ Board of Directors approves all contracts with payors on behalf of all White Sands’ members.

17. Alamogordo Physicians was incorporated in 1996 “to represent and advance the interests of independent physicians practicing in Otero County, New Mexico . . . and to participate effectively in managed care programs.” Alamogordo Physicians’ Board of Directors develops “contracting guidelines” for Mr. Laurenza to use in making demands to payors on price and other contracting terms for physician services. The Alamogordo Physicians Board must “fully support” a contract’s price and other terms as they relate to physician services, before Mr. Laurenza submits the contract to White Sands’ Board for final approval. The Alamogordo Physicians Board has authority to expel physician members from Alamogordo Physicians if they refuse to participate in Board-approved payor contracts.

18. Physician members of Alamogordo Physicians are eligible to be members of White Sands and can participate in White Sands’ payor contracts by entering into a “Physician Provider Agreement” with White Sands. Under the “Physician Provider Agreement,” a physician member of White Sands is automatically bound to a single-signature payor contract, signed by White Sands’ General Manager, if the contract’s prices meet the “guideline fee schedule then in force for White Sands,” and if the General Manager of White Sands and White Sands’ Board

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approve the contract. Nurse anesthetists can become eligible members of White Sands and participate in White Sands' single-signature payor contracts by signing a "Professional Provider Agreement." White Sands' payor contracts include a uniform fee schedule that applies to the entire membership.

19. Through Dacite, Mr. Laurenza – White Sands' General Manager – has provided contracting and consulting services to White Sands since White Sands' inception in 1996. Mr. Laurenza negotiates with payors on prices and other contract terms pursuant to which White Sands' physician and nurse anesthetist members will provide services to subscribers of the payors' health plans. He reports to both Alamogordo Physicians and the White Sands Board on developments in payor negotiations. White Sands compensates Mr. Laurenza with a daily consulting rate, along with a fee for each payor contract that he negotiates for White Sands. The greater the number of a payor's enrollees, the greater the fee. Mr. Laurenza strongly influences White Sands' contracting decisions. He advises the Boards of both White Sands and Alamogordo Physicians on what prices they should accept. Both groups generally agree with his recommendations.

20. White Sands' physician and nurse anesthetist members have agreed with each other and with White Sands not to deal individually, or through any other organization besides White Sands, with any payor with which White Sands was attempting to negotiate a contract jointly on behalf of White Sands' members. Physician and nurse anesthetist members, at Mr. Laurenza's urging, refuse payor offers made to them individually, hindering payors' efforts to establish competitive physician and nurse anesthetist networks in the Alamogordo area. Due to White Sands' large share of Alamogordo-area physicians and nurse anesthetists, payors have repeatedly acceded to respondents' price demands for all physician and nurse anesthetist members. One payor determined that the Alamogordo area is "the most expensive location in New Mexico . . . to conduct business," due to White Sands' prices.

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CIMARRON HEALTH PLAN

21. Cimarron Health Plan (“Cimarron”) is a payor doing business in the Alamogordo area. In October 2000, Mr. Laurenza demanded substantial price increases from Cimarron for physician services on surgical procedures and for nurse anesthetist services regarding its HMO product, on behalf of White Sands’ members. At the time, the contract prices were 123% of 2000 RBRVS and \$40 per ASA unit for anesthesia, respectively. In June 2001, following months of negotiations with Mr. Laurenza, Cimarron finally accepted his demand for a price increase for physician services on surgical procedures, to 140% of 2001 RBRVS. Months later, Cimarron accepted Mr. Laurenza’s demand for price increases for nurse anesthetist services, agreeing to pay nurse anesthetists a 16% increase to the conversion factor for anesthesia, and a 14% increase for pain management.

22. In September 2002, Mr. Laurenza demanded further price increases for physician services under Cimarron’s HMO product. He demanded prices ranging between 160% and 180% of 2001 RBRVS, as high as 28% to 30% over the previously increased prices. In November 2002, Mr. Laurenza modified his price demands for physician services, to prices ranging from 152% to 170% of 2001 RBRVS. In April 2003, Cimarron agreed to these prices. By April 2003, Cimarron also agreed to Mr. Laurenza’s demand for a 5% increase to the conversion factor for anesthesia, and a 6% increase to the price for pain management. During those most recent negotiations, Mr. Laurenza advised physician members on how to refuse Cimarron proposals for individual contracts without appearing to engage in joint conduct.

BLUE CROSS & BLUE SHIELD

23. Blue Cross & Blue Shield of New Mexico (“Blue Cross”) is a health plan doing business in the Alamogordo area. Blue Cross first entered into a non-risk contract with White Sands in November 2000.

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24. In a September 2002 letter to Blue Cross, Mr. Laurenza demanded price increases for White Sands' physicians, ranging from 11% to 24%. At that time, the contracted prices for physician services under White Sands' contract with Blue Cross ranged between 129% and 162% of 2001 RBRVS. After Blue Cross refused this demand, Mr. Laurenza sent Blue Cross a November 2002 letter of termination on behalf of White Sands' physician members, stating that White Sands' physician members would "reconsider" their joint termination if Blue Cross would meet their price demands.

25. Mr. Laurenza advised White Sands' members not to deal individually with Blue Cross, in order to secure greater bargaining leverage and higher prices through the collective power of the group. In a December 2002 letter to White Sands' physician members, Mr. Laurenza warned that individual contracting with Blue Cross would "cause a competitive reaction among providers that would lead to lower reimbursement for all involved." In February 2003, following repeated refusals by White Sands' physician members to deal with it outside of White Sands, Blue Cross agreed to increases in price for various procedures, to a range of 143% to 171% of 2003 RBRVS.

26. Mr. Laurenza also demanded substantial price increases from Blue Cross for White Sands' nurse anesthetist members. Under White Sands' November 2000 contract with Blue Cross, the price for nurse anesthetist services was \$47 per ASA unit for anesthesia, and 153% of 2001 RBRVS for pain management. In August 2001, Mr. Laurenza called for an 11% increase in the anesthesia conversion factor, and a 20% increase in the price for pain management. Blue Cross met Mr. Laurenza's price demand on pain management but counter-offered a conversion factor for anesthesia below Mr. Laurenza's demand. Mr. Laurenza rejected the counter-offer. Having no viable alternative for anesthesia specialists in the area, Blue Cross responded by increasing the conversion factor for anesthesia by 8%, and Mr. Laurenza accepted that term.

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PRESBYTERIAN HEALTH PLAN

27. Presbyterian Health Plan, Inc. (“Presbyterian”), is a health plan doing business in the Alamogordo area. White Sands first entered into a single-signature contract with Presbyterian in 1996 that included agreed upon prices for physicians and nurse anesthetists. In November 2001, Mr. Laurenza initiated renegotiation of the contracted prices with Presbyterian, threatening to terminate the contract on behalf of White Sands’ physician members if Presbyterian did not increase its prices. In January 2002, the Alamogordo Physicians Board voted to demand higher prices from Presbyterian, ranging between 155% and 195% of 2001 RBRVS.

28. In a February 2002 letter to Presbyterian, Mr. Laurenza demanded increases in payment for physician services to prices between 170% and 195% of 2001 RBRVS for various procedural codes. In June 2002, Presbyterian and White Sands agreed to prices for physician services ranging from 160% to 180% of 2001 RBRVS, depending on the code, a range that was pre-approved by the Alamogordo Physicians Board.

29. In May 2003, Mr. Laurenza, on behalf of White Sands’ nurse anesthetists, demanded a 18% price increase for anesthesia, to \$53 per ASA unit. At the time, the contracted price was \$45 per ASA unit. On the same day that he made his demand to Presbyterian, Mr. Laurenza sent the nurse anesthetists questionnaires to survey their support for his demand for a price increase. The questionnaires were designed to coordinate the nurse anesthetists’ joint support for Mr. Laurenza’s price increase demand. Presbyterian rejected Mr. Laurenza’s demand for price increases, and requested that they remain contracted under the same prices.

30. In June 2003, Mr. Laurenza increased his price demand for nurse anesthetists to \$60 per ASA unit. Presbyterian refused and counter-proposed \$48 per ASA unit. Mr. Laurenza warned Presbyterian that the nurse anesthetists would reject the counter-

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proposal, which a majority of them did. Presbyterian and White Sands did not reach an agreement on prices for nurse anesthetists, forcing Presbyterian to pay the White Sands nurse anesthetists unpredictable and high billed charges for anesthesia services in the Alamogordo area.

LOVELACE SANDIA HEALTH PLAN

31. Lovelace Sandia Health Plan (“Lovelace”) contracts with White Sands for health care services in the Alamogordo area. White Sands, through Mr. Laurenza, has successfully negotiated with Lovelace for high uniform prices on behalf of its competing members.

32. In August 2001, Mr. Laurenza sent Lovelace a letter demanding substantial price increases for White Sands’ physicians and nurse anesthetists. He requested prices ranging from 160% to 180% of current year RBRVS for physician services, and a \$50 conversion factor for anesthesia. At the time, White Sands was contracted with Lovelace under prices for physician services ranging between 150% and 165% of current year RBRVS. The conversion factor for anesthesia was \$47 per ASA unit, already 30% higher than the standard rate Lovelace paid for anesthesia elsewhere. One month later, Mr. Laurenza threatened to terminate the contract with Lovelace on behalf of White Sands if the parties did not come to an agreement on price and other terms. By November 2001, Lovelace agreed to meet White Sands’ initial demand for anesthesia, and to increase prices for physician services to prices ranging from 155% to 175%.

OTHER PAYORS

33. White Sands has orchestrated collective negotiations with other payors who do business, or attempted to do business, in the Alamogordo area, on behalf of its physician and nurse anesthetist members. Mr. Laurenza, with the assistance of both the White Sands and Alamogordo Physicians Boards, negotiated with these payors on price, making proposals and counter-proposals, as well

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as accepting or rejecting offers without transmitting them to members for their individual acceptance or rejection, and facilitating collective refusals to deal and threats of refusals to deal with payors. White Sands' members collectively accepted or rejected these payor contracts, and refused to deal with these payors individually. These coercive tactics, due to White Sands' dominant market position in the Alamogordo area, have been highly successful.

RESPONDENTS' PRICE-FIXING IS NOT JUSTIFIED

34. Respondents' joint negotiation of fees and other competitively significant contract terms has not been, and is not, reasonably related to any efficiency-enhancing integration.

RESPONDENTS' ACTIONS HAVE HAD SUBSTANTIAL ANTICOMPETITIVE EFFECTS

35. Respondents' actions described in Paragraphs 16 through 33 of this Complaint have had, or tend to have, the effect of restraining trade unreasonably and hindering competition in the provision of physician and nurse anesthetist services in the Alamogordo area in the following ways, among others:

1. price and other forms of competition among members of White Sands and Alamogordo Physicians were unreasonably restrained;
2. prices for physician and nurse anesthetist services were increased; and
3. health plans, employers, and individual consumers were deprived of the benefits of competition among physicians and among nurse anesthetists.

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**VIOLATION OF THE FEDERAL TRADE COMMISSION
ACT**

36. The combination, conspiracy, acts, and practices described above constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. Such combination, conspiracy, acts, and practices, or the effects thereof, are continuing and will continue or recur in the absence of the relief herein requested.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this eleventh day of January, 2005, issues its Complaint against Respondents White Sands, Alamogordo Physicians, Dacite, and James R. Laurenza.

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of certain acts and practices of the White Sands Health Care System, L.L.C. (“White Sands”), Alamogordo Physicians’ Cooperative, Inc. (“Alamogordo Physicians”), Dacite, Inc. (“Dacite”), and James R. Laurenza, hereinafter sometimes referred to as “Respondents,” and Respondents having been furnished thereafter with a copy of the draft of Complaint that counsel for the Commission 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, 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:

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1. Respondent White Sands is a for-profit limited liability company, organized, existing, and doing business under and by virtue of the laws of the State of New Mexico, with its principal address at 3310 N. White Sands Boulevard, Alamogordo, NM 88311.
2. Respondent Alamogordo Physicians is a cooperative association, organized, existing, and doing business under and by virtue of the laws of the State of New Mexico, with its principal address at P.O. Box 309, Alamogordo, NM 88310.
3. Respondent Dacite is a for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Wyoming, with its principal address at 106 Sweetbriar Lane, Louisville, KY 40207.
4. Respondent James R. Laurenza is the founder and president of Dacite. His principal address is 106 Sweetbriar Lane, Louisville, KY 40207.
5. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and this proceeding is in the public interest.

ORDER

I.

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

- A. “Respondent White Sands” means White Sands Health Care System, L.L.C., its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by White Sands Health Care System, L.L.C., and the respective

officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.

- B. “Respondent Alamogordo Physicians” means Alamogordo Physicians’ Cooperative, Inc., its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by Alamogordo Physicians’ Cooperative, Inc., and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- C. “Respondent Dacite” means Dacite, Inc., its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by Dacite, Inc. and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- D. “Respondent Laurenza” means James R. Laurenza.
- E. “Respondents” means Respondent White Sands, Respondent Alamogordo Physicians, Respondent Dacite, and Respondent Laurenza.
- F. “Medical group practice” means a bona fide, integrated firm in which providers practice medicine together as partners, shareholders, owners, members, or employees, or in which only one provider practices medicine.
- G. “Participate” means (1) to be a partner, shareholder, owner, member, or employee 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.”
- H. “Payor” means any person that pays, or arranges for the payment, for all or any part of any provider services for itself

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or for any other person. “Payor” includes any person that develops, leases, or sells access to networks of providers.

- I. “Person” means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.
- J. “Physician” means a doctor of allopathic medicine (“M.D.”) or a doctor of osteopathic medicine (“D.O.”).
- K. “Preexisting contract” means a contract that was in effect on the date of the receipt by a payor that is a party to such contract of notice sent, pursuant to Paragraph V.B of this Order, of such payor’s right to terminate such contract.
- L. “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.
- M.. “Provider” means any licensed health care professional, including, but not limited to, physicians and nurse anesthetists.
- N. “Qualified clinically-integrated joint arrangement” means an arrangement to provide provider services in which:
 - 1. all providers that participate in the arrangement participate in active and ongoing programs of the arrangement to evaluate and modify the practice patterns of, and create a high degree of interdependence and cooperation among, the providers who participate in the arrangement, in order to control costs and ensure the quality of services provided through the arrangement; and
 - 2. any agreement concerning price 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.

- O. “Qualified risk-sharing joint arrangement” means an arrangement to provide provider services in which:
1. all providers who participate in the arrangement share substantial financial risk through their participation in the arrangement and thereby create incentives for the providers who participate jointly to control costs and improve quality by managing the provision of provider services, such as risk-sharing involving:
 - a. the provision of provider services for a capitated rate from payors;
 - b. the provision of provider services for a predetermined percentage of premium or revenue from payors;
 - c. the use of significant financial incentives (*e.g.*, substantial withholds) for providers 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 providers in different specialties offering a complementary mix of services, for a fixed, predetermined price, 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 price 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.

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II.

IT IS FURTHER ORDERED that Respondents, directly or indirectly, or through any corporate or other device, in connection with the provision of provider 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 providers:
 - 1. to negotiate on behalf of any provider with any payor,
 - 2. to deal, refuse to deal, or threaten to refuse to deal with any payor,
 - 3. regarding any term, condition, or requirement upon which any provider deals, or is willing to deal, with any payor, including, but not limited to, price terms, or
 - 4. not to deal individually with any payor, or not to deal with any payor through any arrangement other than Respondent White Sands or Respondent Alamogordo Physicians;
- B. Exchanging or facilitating in any manner the exchange or transfer of information among providers concerning any provider’s willingness to deal with a payor, or the terms or conditions, including price terms, on which the provider is willing to deal;
- C. Attempting to engage in any action prohibited by Paragraph II.A or II.B, above; and
- D. Encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any person to engage in any action that would be prohibited by Paragraphs II.A through II.C above.

PROVIDED, HOWEVER, that nothing in Paragraph II of this Order shall prohibit any agreement involving or conduct by:

- (i) Respondent Dacite or Respondent Laurenza, subject to the provisions of Paragraph IV below, that is reasonably necessary to form, participate in, or take any action in furtherance of a qualified risk-sharing joint arrangement or a qualified clinically-integrated joint arrangement, or that solely involves providers in the same medical group practice; or
- (ii) Respondent White Sands or Respondent Alamogordo Physicians that is reasonably necessary to form, participate in, or take any action in furtherance of a qualified risk-sharing joint arrangement or a qualified clinically-integrated joint arrangement, so long as the arrangement does not restrict the ability, or facilitate the refusal, of providers who participate in it to deal with payors on an individual basis or through any other arrangement.

III.

IT IS FURTHER ORDERED that Respondent Dacite and Respondent Laurenza, for three (3) years after the date that this Order becomes final, directly or indirectly, or through any corporate or other device, in connection with the provision of provider 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. Negotiating with any payor on behalf of Respondent White Sands, Respondent Alamogordo Physicians, or any provider who participates or has participated in Respondent White Sands or Respondent Alamogordo Physicians, notwithstanding whether such conduct also is prohibited by Paragraph II of this Order; and

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- B. Advising any provider who participates, or has participated, in Respondent White Sands or Respondent Alamogordo Physicians to accept or reject any term, condition, or requirement of dealing with any payor, notwithstanding whether such conduct also is prohibited by Paragraph II of this Order.

IV.

IT IS FURTHER ORDERED that, for three (3) years from the date this Order becomes final, each Respondent shall notify the Secretary of the Commission in writing (“Notification”) at least sixty (60) days prior to entering into any arrangement with any providers under which such Respondent would act as a messenger, or as an agent on behalf of those providers, with payors regarding contracts. The Notification shall include the identity of each proposed provider participant; the proposed geographic area in which the proposed arrangement will operate; a copy of any proposed provider participation agreement; a description of the proposed arrangement’s purpose and function; a description of any resulting efficiencies expected to be obtained through the arrangement; and a description of procedures to be implemented to limit possible anticompetitive effects, such as those prohibited by this Order. Notification is not required for such Respondent’s subsequent acts as a messenger pursuant to an arrangement for which this Notification has been given. Receipt by the Commission from such Respondent of any Notification, pursuant to Paragraph IV of the Order, is not to be construed as a determination by the Commission that any action described in such Notification does or does not violate this Order or any law enforced by the Commission.

PROVIDED, HOWEVER, that, if Respondent Dacite or Respondent Laurenza enter into an arrangement that solely involves providers in one medical group practice, Notification required by Paragraph IV of this Order shall include only the identity of that medical group practice and a copy of any proposed provider participation agreement.

V.

IT IS FURTHER ORDERED that Respondent White Sands shall:

- A. Within thirty (30) days from the date that this Order becomes final send by first-class mail, return receipt requested, a copy of this Order and the Complaint to:
 - 1. each provider who participates, or has participated, in Respondent White Sands since January 1, 2003;
 - 2. each officer, director, manager, and employee of Respondent White Sands;
 - 3. the chief executive officer of each payor with which Respondent White Sands has a record of having been in contact since January 1, 2003, regarding contracting for the provision of provider services, and include in such mailing the notice specified in Appendix A to this Order;
- B. Terminate, without penalty or charge, and in compliance with any applicable laws, any preexisting contract with any payor for the provision of provider services, at the earlier of: (1) receipt by Respondent White Sands of a written request from a payor to terminate such contract, or (2) the earliest termination or renewal date (including any automatic renewal date) of such contract; *provided, however*, a preexisting contract may extend beyond any such termination or renewal date no later than one (1) year from the date that the Order becomes final if, prior to such termination or renewal date, (a) the payor submits to Respondent White Sands a written request to extend such contract to a specific date no later than one (1) year from the date that this Order becomes final, and (b) Respondent White Sands has determined not to exercise any right to terminate; *provided further*, that any payor making such request to extend a contract retains the right, pursuant to part (1) of Paragraph V.B of this Order, to terminate the contract at any time;

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- C. Within ten (10) days of receiving a written request from a payor, pursuant to Paragraph V.B(1) of this Order, distribute, by first-class mail, return receipt requested, a copy of that request to each provider participating in Respondent White Sands as of the date Respondent White Sands receives such request;
- D. For a period of three (3) years from the date that this Order becomes final:
 - 1. distribute by first-class mail, return receipt requested, a copy of this Order and the Complaint to:
 - a. each provider who begins participating in Respondent White Sands, and who did not previously receive a copy of this Order and the Complaint, within thirty (30) days of the time that such participation begins;
 - b. each payor that contracts with Respondent White Sands for the provision of provider services, and that did not previously receive a copy of this Order and the Complaint, within thirty (30) days of the time that such payor enters into such contract;
 - c. each person who becomes an officer, director, manager, or employee of Respondent White Sands, and who did not previously receive a copy of this Order and the Complaint, within thirty (30) days of the time that he or she assumes such responsibility with Respondent White Sands;
 - 2. annually publish a copy of this Order and the Complaint in an official annual report or newsletter sent to all providers who participate in Respondent White Sands, with such prominence as is given to regularly featured articles;
- E. File a verified written report within sixty (60) days from the date that this Order becomes final, annually thereafter for three

(3) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may by written notice require. Each such report shall include:

1. a detailed description of the manner and form in which Respondent White Sands has complied and is complying with this Order;
2. copies of the return receipts required by Paragraphs V.A, V.C, and V.D of this Order; and

F. Notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of Respondent White Sands, (2) acquisition, merger or consolidation of Respondent White Sands, or (3) any other change in Respondent White Sands that may affect compliance obligations arising out of the order, including but not limited to assignment, the creation or dissolution of subsidiaries, or any other change in Respondent White Sands.

PROVIDED, HOWEVER, that, if Respondent White Sands dissolves or otherwise ceases to do business, Respondent Alamogordo Physicians shall have the obligation to comply with those provisions of Paragraph V.A through V.E of this Order to the extent applicable to Respondent Alamogordo Physicians, its officers, and members of its board of directors.

VI.

IT IS FURTHER ORDERED that Respondent Alamogordo Physicians shall notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of Respondent Alamogordo Physicians, (2) acquisition, merger or consolidation of Respondent Alamogordo Physicians, or (3) any other change in Respondent Alamogordo Physicians that may affect compliance obligations arising out of the order, including but not limited to assignment, the creation or dissolution of subsidiaries, or any other change in Respondent Alamogordo Physicians.

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VII.

IT IS FURTHER ORDERED that, if neither Respondent White Sands nor Respondent Alamogordo Physicians complies with all or any portion of Paragraphs V.A through V.F of this Order, or if Respondent Alamogordo Physicians fails to comply with Paragraph VI of this Order, within sixty (60) days of the times set forth in those paragraphs, then Respondent Laurenza shall, within thirty (30) days thereafter, comply with those portions of Paragraphs V.A through V.F and Paragraph VI of this Order with which Respondent White Sands or Respondent Alamogordo Physicians did not comply.

VIII.

IT IS FURTHER ORDERED that Respondent Dacite shall:

- A. Within thirty (30) days from the date that this Order becomes final, send a copy of this Order and the Complaint by first-class mail, return receipt requested:
 - 1. to each provider who participates, or has participated, since January 1, 2003, in a provider group represented by Respondent Dacite;
 - 2. to each payor with which Respondent Dacite has dealt since January 1, 2003, for the purpose of contracting, or seeking to contract, while representing or advising any group of providers relating to contracting with such payor for the provision of provider services; and
 - 3. to (a) each present and past employee of Respondent Dacite, and (b) each individual who has acted as a contractor since January 1, 2003, for Respondent Dacite (i) relating to contracting, or seeking to contract, with payors for the provision of provider services, or (ii) relating to advising providers with regard to their dealings with payors in connection with the provision of provider services;

PROVIDED, HOWEVER, that Respondent Dacite is not required to send a copy of this Order and the Complaint to any provider or payor that received a copy of this Order and the Complaint from Respondent White Sands or Respondent Alamogordo Physicians, pursuant to Paragraphs V.A.1 and 3 or Paragraphs V.D.1.a and b of this Order;

B. For three (3) years after the date this Order becomes final, distribute a copy of this Order and the Complaint by first-class mail, return receipt requested:

1. to all providers that Respondent Dacite represents relating to contracting, or seeking to contract, with payors for the provision of provider services, or that Respondent Dacite advises relating to the provision of provider services, within (30) days of the time that Respondent Dacite begins providing such representation or advice; and
2. to each payor with which Respondent Dacite deals for the purpose of contracting, or seeking to contract, pursuant to any arrangement to represent or advise any provider, relating to contracting with such payor for the provision of provider services, within thirty (30) days of such dealing;

PROVIDED, HOWEVER, that Respondent Dacite is not required to send a copy of this Order and the Complaint to any provider who begins participating in Respondent White Sands or Respondent Alamogordo Physicians or any payor that contracts with Respondent White Sands or Respondent Alamogordo Physicians for the provision of provider services, and that received a copy of this Order and the Complaint from Respondent White Sands or Respondent Alamogordo Physicians, pursuant to Paragraphs V.A.1 and 3 or Paragraphs V.D.1.a and b of this Order;

C. File verified written reports within sixty (60) days from the date that this Order becomes final, annually thereafter for three (3) years on the anniversary of the date this Order becomes

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final, and at such other times as the Commission may by written notice require. Each report shall include:

1. a detailed description of the manner and form in which Respondent Dacite has complied and is complying with this Order; and
 2. copies of the return receipts required by Paragraphs VIII.A and VIII.B; and
- D. Notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of Respondent Dacite, (2) acquisition, merger or consolidation of Respondent Dacite or (3) any other change in Respondent Dacite that may affect compliance obligations arising out of the order, including but not limited to assignment, the creation or dissolution of subsidiaries, or any other change in Respondent Dacite.

IX.

IT IS FURTHER ORDERED that, if Respondent Dacite fails to comply with all or any portion of Paragraph VIII of this Order within sixty (60) days of the time set forth in those portions of Paragraph VIII, then Respondent Laurenza shall, within thirty (30) days thereafter, comply with those portions of Paragraph VIII of this Order with which Respondent Dacite did not comply.

X.

IT IS FURTHER ORDERED that each Respondent shall notify the Commission of any change in his or its respective principal address within twenty (20) days of such change in address.

XI.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, each Respondent 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 his or its possession, or under his or its control, relating to any matter contained in this Order; and
- B. Upon five (5) days' notice to such Respondent, and in the presence of counsel, and without restraint or interference from him or it, to interview such Respondent or employees of such Respondent.

XII.

IT IS FURTHER ORDERED that this Order shall terminate on January 11, 2025.

Analysis

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed Consent Order with the White Sands Health Care System, L.L.C., Alamogordo Physicians' Cooperative, Inc., Dacite, Inc., and James R. Laurenza. The agreement settles charges that these parties violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, by orchestrating and implementing agreements among the physician and certified registered nurse anesthetist (nurse anesthetist) members of White Sands to fix prices and other terms on which they would deal with health plans, and to refuse to deal with such purchasers 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 any respondent that said respondent violated the law or that the facts alleged in the Complaint (other than jurisdictional facts) are true.

The Complaint

The allegations of the Complaint are summarized below.

White Sands is a physician-hospital organization (PHO), consisting of Alamogordo Physicians, an independent practice association (IPA); Gerald Champion Regional Medical Center

(Gerald Champion), the sole hospital in the Alamogordo area, which is located in south-central New Mexico; and 31 non-physician health care providers, including all five nurse anesthetists in the Alamogordo area. White Sands was organized in 1996 to “develop pricing policies and . . . negotiate and enter into Managed Care Contracts” on behalf of its members.

Alamogordo Physicians is composed of 45 physicians, representing 84% percent of all physicians independently practicing (that is, those not employed by area hospitals) in and around the Alamogordo area. Dacite provides consulting and payor contracting services to White Sands. Mr. Laurenza is the founder and President of Dacite, and the General Manager and principal contract negotiator for White Sands.

White Sands’ members refuse to deal with health plans on an individual basis. Instead, Mr. Laurenza negotiates price and other contract terms with health plans that desire to contract with White Sands’ members. Contract terms for physician services that Mr. Laurenza negotiates for White Sands are presented to the White Sands’ Board of Managers for approval after acceptance by the Alamogordo Physicians’ Board of Directors. Mr. Laurenza also negotiates contract provisions, including fees, on behalf of independently practicing non-physician health care providers, namely nurse anesthetists. Respondents have orchestrated collective agreements on fees and other terms of dealing with health plans, carried out collective negotiations with health plans, and orchestrated refusals to deal and threats to refuse to deal with health plans that resisted respondents’ desired terms. Although White Sands purported to operate as a “messenger model,” – that is, an arrangement that does not facilitate horizontal agreements on price – it engaged in various actions that demonstrated or orchestrated such agreements.¹

¹ Some arrangements can facilitate contracting between health care providers and payors without fostering an illegal agreement among competing physicians on fees or fee-related terms. One

Analysis

Respondents have repeatedly succeeded in forcing numerous health plans to raise fees paid to White Sands' members, and thereby raised the cost of medical care in the Alamogordo area. They have been successful in "leverag[ing] the collective power of the members in obtaining more favorable reimbursement rates than could be negotiated . . . individually."

White Sands engaged in no efficiency-enhancing integration sufficient to justify respondents' joint negotiation of fees. By orchestrating agreements among White Sands members to deal only on collectively-determined terms, and actual or threatened refusals to deal with health plans that would not meet those terms, respondents have violated Section 5 of the FTC Act.

The Proposed Consent Order

The proposed Order is designed to remedy the illegal conduct charged in the Complaint and prevent its recurrence. It is similar to recent consent orders that the Commission has issued to settle charges that physician groups engaged in unlawful agreements to raise fees they receive from health plans. Unlike recent consent orders, however, this Order also settles charges that non-physician health care providers engaged in unlawful price agreements as well. The Order also includes temporary "fencing-in" relief to ensure that the alleged unlawful conduct by respondents does not continue.

The proposed Order's specific provisions are as follows:

Paragraph II.A prohibits respondents from entering into or facilitating any agreement between or among any health care

such approach, sometimes referred to as a "messenger model" arrangement, is described in the 1996 Statements of Antitrust Enforcement Policy in Health Care jointly issued by the Federal Trade Commission and U.S. Department of Justice, at 125. *See* <http://www.ftc.gov/reports/hlth3s.htm#8>.

providers: (1) to negotiate with payors on any health care provider's behalf; (2) to deal, not to deal, or threaten not to deal with payors; (3) on what terms to deal with any payor; or (4) not to deal individually with any payor, or to deal with any payor only through an arrangement involving the respondents.

Other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits the respondents from facilitating exchanges of information between health care providers concerning whether, or on what terms, to contract with a payor. Paragraph II.C bars attempts to engage in any action prohibited by Paragraph II.A or II.B, and Paragraph II.D proscribes inducing anyone to engage in any action prohibited by Paragraphs II.A through II.C.

As in other Commission orders addressing health care providers' collective bargaining with health care purchasers, certain kinds of agreements are excluded from the general bar on joint negotiations. First, respondents would not be precluded from engaging in conduct that is reasonably necessary to form or participate in legitimate joint contracting arrangements among competing health care providers, whether a "qualified risk-sharing joint arrangement" or a "qualified clinically-integrated joint arrangement." The arrangement, however, must not facilitate the refusal of, or restrict, participants from contracting with payors outside of the arrangement.

As defined in the proposed Order, a "qualified risk-sharing joint arrangement" possesses two key characteristics. First, all participants must share substantial financial risk through the arrangement, such that the arrangement creates incentives for the participants jointly to control costs and improve quality by managing the provision of services. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement.

Analysis

A “qualified clinically-integrated joint arrangement,” on the other hand, need not involve any sharing of financial risk. Instead, as defined in the proposed Order, participants must participate in active and ongoing programs to evaluate and modify their clinical practice patterns in order to control costs and ensure the quality of services provided, and the arrangement must create a high degree of interdependence and cooperation among participants. As with qualified risk-sharing arrangements, any agreement concerning price or other terms of dealing must be reasonably necessary to achieve the efficiency goals of the joint arrangement.

Also, because the Order is intended to reach agreements among horizontal competitors, Paragraph II would not bar agreements that only involve health care providers who are part of the same medical group practice (defined in Paragraph I.E).

Paragraph III, for a period of three years, bars Dacite and Mr. Laurenza from negotiating with any payor on behalf of White Sands, Alamogordo Physicians, or any White Sands or Alamogordo Physicians member; and from advising any White Sands or Alamogordo Physicians member to accept or reject any term, condition, or requirement of dealing with any payor. This temporary “fencing-in” relief is included to ensure that the alleged unlawful conduct by these respondents does not continue.

Paragraph IV, for a period of three years, requires respondents to notify the Commission before entering into any arrangement to act as a messenger, or as an agent on behalf of any health care providers, with payors regarding contracts. Paragraph IV sets out the information necessary to make the notification complete.

Paragraph V, which applies only to White Sands, requires White Sands to distribute the Complaint and Order to all health care providers who have participated in White Sands, and to payors that negotiated contracts with White Sands or indicated an interest in contracting with White Sands. Paragraph V.B requires White Sands, at any payor’s request and without penalty, or within

one year after the Order is made final, to terminate its current contracts. Paragraph V.C requires White Sands to distribute payor requests for contract termination to all health care providers who participate in White Sands, and, in the event that White Sands fails to comply with the requirements of Paragraph V due to dissolution or cessation of business, Alamogordo Physicians is required to do so.

Paragraph VI requires Alamogordo Physicians to notify the Commission of any change in Alamogordo Physicians that may affect its compliance with the Order, such as dissolution. In the event that White Sands or Alamogordo Physicians fails to comply with the requirements of Paragraph V, or Alamogordo Physicians fails to comply with Paragraph VI, Paragraph VII would require Mr. Laurenza to do so.

Paragraph VIII generally requires Dacite to distribute the Complaint and Order to health care providers who have participated in any group that has been represented by Dacite since January 1, 2003, and to each payor with which Dacite has dealt since January 1, 2003, for the purpose of contracting. In the event that Dacite fails to comply with the requirements of Paragraph VIII, Paragraph IX would require Mr. Laurenza to do so.

Paragraphs V.E, V.F, VIII.C, VIII.D, X, and XI of the proposed Order impose various obligations on respondents to report or provide access to information to the Commission to facilitate monitoring respondents' compliance with the Order.

The proposed Order will expire in 20 years.

Complaint

IN THE MATTER OF

GENZYME CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE
COMMISSION ACT

Docket C-4128; File No. 0410083

Complaint, December 20, 2004--Decision, January 31, 2005

This consent order, among other things, requires Respondent Genzyme to divest to Schering AG all of its contractual and decision-making rights regarding Campath® -- a monoclonal antibody immunosuppressant drug that is used to suppress the immune system and reduce the likelihood of rejection of a transplanted organ -- for solid organ transplant, including its portion of the earnings from sales of Campath® in solid organ transplant. An accompanying Order to Hold Separate and Maintain Assets requires Respondent Genzyme to hold separate and maintain the viability of the Campath® solid organ transplant assets until their transfer to Schering, and prohibits the exchange of certain material confidential information between Respondent Genzyme and Schering.

Participants

For the Commission: *Norman A. Armstrong, Jr., Paul R. Frontczak, Stephanie C. Bovee, Tammy L. Imhoff, Sylvia M. Brooks, Eric D. Rohlck, Jennifer Lee, Jordan Coyle, Matthew J. Reilly, Michael R. Moiseyev, Daniel P. Ducore, and Mark Hertzendorf.*

For the Respondents: *Michael L. Weiner and Jill A. Ross, Skadden, Arps, Slate, Meagher & Flom, and David M. Foster, Fulbright & Jaworski L.L.P.*

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Genzyme Corporation ("Genzyme"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Respondent ILEX Oncology, Inc. ("Ilex"), a corporation subject to the