

Complaint

IN THE MATTER OF

ABCSP, INC.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4378; File No. 112 3168**Complaint, December 3, 2012 – Decision, December 3, 2012*

This consent order addresses ABCSP, Inc.’s statements made in Internet advertising regarding its placement services for seniors requiring long-term care in assisted living facilities and other non-nursing home facilities servicing the frail elderly. The complaint alleges that ABC violated of Section 5(a) of the Federal Trade Commission Act by making false and unsubstantiated claims that it, or its care coordinators, view or evaluate virtually all or a substantial majority of such facilities in every geographic region of the United States. The consent order prohibits ABC from making any false or unsubstantiated representations regarding its placement services.

Participants

For the *Commission*: Zachary Hunter and David R. Spiegel.

For the *Respondent*: Carl Zwisler, Gray, Plant, and Mooty.

COMPLAINT

The Federal Trade Commission, having reason to believe that ABCSP, Inc. (“ABC,” or “respondent”) has violated provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent is a California corporation with its principal office or place of business at 1406 Blue Oaks Blvd., Ste. 100, Roseville, CA 95747. Respondent does business under its own name as well as the name, “Always Best Care.” Respondent provides its services through a network of franchisees located throughout the United States.

2. Respondent advertises that its locally-based “care coordinators” offer consumers free assistance in obtaining placements at assisted living communities, residential care homes, and other facilities which provide care for the frail elderly. ABC

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states that it receives compensation for its placement services from the facilities at which it makes its placements.

3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

4. There are least 39,000 assisted living facilities in the United States, as well as thousands of smaller, residential care homes which provide assistance and living arrangements for the frail elderly. In many of the geographic areas in which ABC’s franchisees operate, there are at least one thousand such facilities and homes.

5. ABC’s training manual for new franchisees recommends that they sign contracts with at least 35 to 40 such facilities before opening for business. ABC typically does not know the identity of the assisted living facilities and residential care homes with which its franchisees have contracts.

6. Respondent has disseminated or has caused the dissemination of promotional materials for its placement services through web-based advertisements. *See, e.g.*, Exhibits A through C, attached hereto. ABC’s promotional materials contain the following statements or depictions:

a. **ABC’s Web Site:**

To help guide you through the maze of assisted living communities, independent communities and residential care homes, Always Best Care visits or evaluates most every facility in our markets. If you need help selecting assisted living facilities that are ideal for your loved ones, let us provide our expertise.

Exh. A.

b. **ABC’s Web Site:**

With our free assisted living placement program, we match our clients with the top three or four most

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appropriate living options based upon individual needs, custom screening, and available budgets.

....

Understanding what community is right for your loved one can be a daunting task. Always Best Care helps seniors and their families through the entire process. Our Care Coordinators are local and have personally viewed virtually all of the assisted living communities in your area. Contact your Always Best Care representative today.

Exh. B.

c. **ABC's Web Site:**

Our Care Coordinators are local and have personally viewed most RCFE [Residential Care Facility for Elderly] homes in your area.

Exh. C.

7. Through the means described in Paragraph 6, ABC has represented, expressly or by implication, that its placement recommendations for assisted living facilities and residential care homes in different geographic regions are based on the personal knowledge of its personnel or agents regarding virtually all, or a substantial majority, of such facilities in these geographic regions.

8. In truth and in fact, in numerous geographic regions of the United States, ABC's placement recommendations for assisted living facilities and residential care homes are not based on the personal knowledge of its personnel or agents of virtually all, or a substantial majority, of the facilities in that geographic region. Therefore, the representation set forth in Paragraph 7 is false or misleading.

9. Through the means described in Paragraph 6, respondent has represented, expressly or by implication, that it possessed and

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relied upon a reasonable basis that substantiated the representation set forth in Paragraph 7, at the time the representation was made.

10. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representation set forth in Paragraph 7, at the time the representation was made. Therefore, the representation set forth in Paragraph 9 is false or misleading.

11. Respondent's practices, as alleged in this complaint, constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission, this third day of December, 2012, has issued this complaint against respondent.

By the Commission.

Complaint

Exhibit A

Always Best Care : Exceptional Senior Care : In Home Care : Assisted Living Communit... Page 2 of 3



What Health Care Professionals Say About Always Best Care...

Professional Testimonial

PLAY VIDEO



Click on a state to display the Always Best Care locations near you. Show All

State:

City:

Click here to learn more about in-home care, senior care, assisted living placement services and skilled home health care.

The Best In Professional and Compassionate Senior Care Services

If you're in need of in-home care (also known as senior care or elderly care) or other related services, Always Best Care Senior Services can help. Our array of services allows you to find the ideal solution for your senior care needs. With a commitment to exceeding your expectations, we strive to deliver the optimum care for our clients. Put our expertise to work for your loved ones to ensure they receive the care and attention they deserve. When only the best will do, Always Best Care is here for you. Always Best Care offers senior care services such as:

- **Home Care** - In-home care services tailored to your needs. Our team of home care experts guarantees your loved ones need on the high level of care they deserve. At Always Best Care, you'll find only the best caregivers trained to help seniors and very knowledgeable in the services that can make senior care a rewarding experience.
- **Assisted Living Placement** - To help guide you through the maze of assisted living communities, independent living communities and residential care homes, Always Best Care visits or assessments most every facility in our markets. If you need help selecting assisted living facilities that are ideal for your loved one, let us provide our expertise.
- **Alzheimer's & Dementia Care** - Specialized home care and senior care services that provide your loved one the Alzheimer's care and other dementia care they require.
- **Skilled Nursing** - Our team of experienced registered nurses can provide clinical care for seniors that prefer to stay in their home, but require a higher level of skilled care. Our skilled home health care services are available in select locations - call your local Always Best Care office to determine if these services are available in your area.

With unparalleled professional and exceptional care, you can count on Always Best Care Senior Services to assist with your elderly care needs.

Home Care Agencies

Our home care agencies have served more than 25,000 seniors across the USA and Canada.

Our home care providers can offer assistance with:

- Meal Preparation
- Medication Management
- Grooming
- Dressing
- Bathing
- Cleaning the Bathroom
- Medication Reminders
- Mobility
- Mail Bills and Letters
- Groceries
- Answer the Door and Phone
- And Much More

Do you need to determine which assisted living facility is right for your loved one? Let Always Best Care help you in your search. Our team is experienced in assisted living placement and we can provide the expertise you need in selecting the best community. Always Best Care can help you:

- Research potential assisted living facilities
- Make arrangements to tour assisted living communities with you
- Assess the facility's ability to meet the needs of your loved one
- Skilled Nursing Care You Can Trust

When available, our skilled nursing care is second to none. Always Best Care provides skilled home health care to assist with:

- Wound Care
- Catheter Maintenance
- Chronic Disease Management
- IV Therapy
- Injections
- Healthy Living Education
- Medication Management
- New Diagnostic Education
- Pain Management
- Post Surgery Care
- Restorative Care
- And More

When you're searching for in-home care, we make it easy to find the home care agencies and skilled home health care agencies that specialize in the areas in which you need assistance. From elderly care to dementia care and many other senior care services, we're here to simplify your search for the care you need. Let us help in your search for assisted living facilities or any other elderly care needs you may have. Let Always Best Care help you secure the best senior care services in your area.

We Assist In Evaluating Financial, Physical, & Social Needs So You Find The Ideal Care Solution

Exhibit A

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Exhibit B

Free Senior Housing Placement Services : Assisted Living Facilities : Dementia Care : Alzheimer's Care : ... Page 1 of 1

Always BEST CARE
SENIOR SERVICES

For a free care consultation, call toll-free 1-855-470-CARE

FREE
By Care

Home Care | Assisted Living | Alzheimer's / Dementia | Skilled Nursing | Careers

Free Service
Important Definitions
Young Adults
What to Ask

FREE SENIOR HOUSING PLACEMENT SERVICES



Since 1996, Always Best Care Senior Services has been changing the way people think about senior living. We take pride in helping seniors enjoy fulfilling lives. Our experience and commitment to serving seniors has fostered independence and promote individuality. We provide the best choices to our clients while maintaining the highest standards for living arrangements. We work directly with medical professionals, care communities, seniors and their families to ensure that whoever our client chooses to live, they continue to receive the highest level of care, dignity, and respect. With our free assisted living placement program, we match our clients with the top three or four most appropriate living options based upon individual needs, current screening and available budgets. Then, we personally take our clients and their families on a tour of the matched assisted living community.

Understanding what community is right for your loved one can be a daunting task. Always Best Care helps seniors and their families through the entire process. Our Care Coordinators are local and have personally viewed virtually all of assisted living communities in your area. Contact your local Always Best Care representative today for your free no obligation consultation.

Contact Us

Each office is independently owned and operated










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Log In

Exhibit B

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Exhibit C

Residential Care Homes for Elderly RCHE : 24 Hour Health Services : Assisted Living : Home Care for S... Page 1 of 2

Always BEST CARE SENIOR SERVICES

Complimentary Care Consultation Request

How Can We Help You 8

In-Home Care Services | Find Senior Housing | Alzheimer's Care | Emergency Response System | Become a Care Provider | About Us

Residential Care Homes for the Elderly

What is a Residential Care Home or Board and Care Home for the Elderly (RCFE)?

A residential care home for seniors or RCHE is typically a home like yours or mine that has been converted to a care home and is licensed by the state to take care of seniors. Most RCHE's are set-up to provide care to 6 seniors; however they can be smaller or larger in size. RCHE homes were the first widely recognized form of assisted living, and as such, they provide similar care but typically not as much social interaction. Residents of a RCHE Home have a private or shared room and may have private or shared bathrooms. The rooms usually do not include a kitchen, since providing meals is a major function of the home. RCHE homes generally have some common areas for socializing which include a dining area and one or more other rooms that are mainly for informal contact.

Some but not all of the key Characteristics of RCHE home are;

- Activities of Daily Living (dressing, personal care, bathing, incontinence care)
- Meals served (usually communal style)
- 24-hour supervision (around the clock staff but not necessary Awake staff)
- Community Services (laundry, cleaning, etc.)
- Health Services (medications management and dispensing, diabetes care)
- Overall Health (physical, emotional)

As with any type of senior community understanding what community is right for your loved one can be a daunting task. For over a decade Always Best Care has been helping our seniors through this process. Let Always Best Care guide you through the health care maze. Our Care Coordinators are local and have personally viewed most RCHE homes in your area. Call Always Best Care today for your free no obligation consultation or visit us at www.alwaysbestcare.com to find the office nearest you.

To learn more about "what is residential care home for seniors" click here.

Free Care Consultation | Call (800) 474-4747 | Free, No-Obligation, C

Each Always Best Care Senior Services Franchise is Independently Owned and Operated

Home | In-Home Care Services | Find Senior Housing | Alzheimer's Care | Emergency Response System | Become a Care Provider | About Us | Complimentary Care Consultation | Request Information

Always Best Care Franchise | Assisted Living For Seniors | Assisted Living Placement | Preventing Caregiver Burnout | Residential Senior Services Franchises | Senior Care Franchise Business | Senior Homecare | Starting Senior Care Business | Homecare

Exhibit C

Decision and Order

DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of a Complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued, would charge the respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in such complaint, or that any of 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 the respondent has violated the Federal Trade Commission Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from an interested person pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent ABC is a California corporation with its principal office or place of business at 406 Blue Oaks Blvd., Ste. 100, Roseville, CA 95747.

Decision and Order

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER**DEFINITIONS**

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

- A. Unless otherwise specified, respondent shall mean ABCSP, Inc., its successors and assigns, and its officers, agents, representatives, and employees.
- B. Commerce shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.
- C. Covered service shall mean any service involving placements in an assisted living facility.
- D. Assisted living facility, or ALF shall mean any congregate residential setting, which provides housing for persons 60 years or older, as well as assistance in activities of daily living (e.g., bathing and dressing) and medication administration. The definition includes residential care facilities for the elderly (RCFEs), as well as any other facilities which perform the functions of ALFs or RCFEs, but excludes facilities which a state has licensed as skilled nursing facilities.

I. Prohibited Misrepresentations; Substantiation

- A. **IT IS ORDERED** that respondent or other persons who are in active concert or participation with them, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, or sale of any covered service in or affecting commerce, shall not represent in any manner, directly or indirectly, expressly or by implication, that its personnel or agents

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personally view, inspect, or monitor assisted living facilities, including representations regarding the viewing, inspecting, or monitoring of any number, portion, or percentage of assisted living facilities in a geographic region, unless the representation is non-misleading and, at the time it is made, respondent possesses and relies upon competent and reliable evidence that, when considered in light of the entire body of relevant evidence, substantiates that the representation is true.

- B. **IT IS FURTHER ORDERED** that respondent, or other persons who are in active concert or participation with them, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, or sale of any covered service in or affecting commerce, shall not make any representation about its placement services in any manner, directly or indirectly, expressly or by implication, unless the representation is non-misleading and, at the time it is made, respondent possesses and relies upon competent and reliable evidence that, when considered in light of the entire body of relevant evidence, substantiates that the representation is true.

II. Records

IT IS FURTHER ORDERED that respondent ABCSP, Inc., and its successors and assigns, shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict,

Decision and Order

qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

III. Acknowledgments

IT IS FURTHER ORDERED that respondent ABCSP, Inc., and its successors and assigns, shall deliver a copy of this order to all current and future principals, members, officers, directors, and managers, and to all current and future employees, agents, and representatives having decision-making authority with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent ABCSP, Inc., and its successors and assigns shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying all acknowledgments of receipt of this order obtained pursuant to this Part.

IV. Notices

IT IS FURTHER ORDERED that respondent ABCSP, Inc., and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation or any business entity that it directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this order, including the formation of a new business entity; a dissolution, assignment, sale, merger or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge.

Decision and Order

Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: ABCSP, Inc., File No. 1123168.

V. Reports

IT IS FURTHER ORDERED that respondent ABCSP, Inc., and its successors and assigns, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, respondent shall submit additional true and accurate written reports.

VI. Sunset

This order will terminate on December 3, 2032, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Part of this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order

Analysis to Aid Public Comment

will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT**

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an agreement containing a consent order from ABCSP, Inc. (“ABC” or “respondent”)

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The matter involves certain statements ABC has made in Internet advertising regarding its placement services for seniors requiring long term care in assisted living facilities (“ALFs”) and other non-nursing home facilities servicing the frail elderly. According to the Commission’s complaint, ABC made false and unsubstantiated claims that it, or its care coordinators, view or evaluate virtually all or a substantial majority of such facilities in every geographic region of the United States. Thus, the complaint states that ABC has engaged in deceptive practices in violation of Section 5(a) of the FTC Act.

The proposed order contains two provisions designed to prevent ABC, or other persons who are in active concert or participation with it, from engaging in similar acts and practices in the future. Part I.A prohibits respondent from misrepresenting or making unsubstantiated representations that it, or its agents,

Analysis to Aid Public Comment

personally view, inspect, or monitor assisted living facilities, including representations that it personally views, inspects, or monitors any particular number, portion, or percentage of ALFs in a geographic region.

Part I.B prohibits ABC from making any false or unsubstantiated representations regarding its placement services.

Parts II through V require ABC to: keep copies of advertisements and materials relied upon in disseminating any representation covered by the order; provide copies of the order to certain personnel, agents, and representatives having supervisory responsibilities with respect to the subject matter of the order; notify the Commission of changes in its structure that might affect compliance obligations under the order; and file a compliance report with the Commission and respond to other requests from FTC staff. Part VI provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or the proposed order, or to modify the proposed order's terms in any way.

Complaint

IN THE MATTER OF

**READING HEALTH SYSTEM
AND
SURGICAL INSTITUTE OF READING**COMPLAINT AND ORDER IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT*Docket No. 9353; File No. 121 0155**Complaint, November 16, 2012 – Decision, December 7, 2012*

This case addresses the \$43 million acquisition by Reading Health System of Surgical Institute of Reading. The complaint alleges that the acquisition, if consummated, would violate Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act by significantly reducing competition in the markets for inpatient orthopedic/spine surgery; outpatient orthopedic/spine surgery; outpatient general surgery; and outpatient ear, nose, and throat (“ENT”) surgery in the Reading, Pennsylvania area. The order dismisses the Administrative Complaint without prejudice because Respondents abandoned the proposed acquisition and the Commission is not reaching a decision on the merits.

Participants

For the *Commission*: Maggie DiMoscato, Janelle Filson, Kevin Hahm, Douglas Litvack, Jeremy Morrison, Paul Nolan, Sean Pugh and Stephanie Reynolds.

For the *Respondents*: Joanne M. Judge, Neil Schur, and Joseph Wolfson, Stevens & Lee; Jeffrey Brennan, McDermott, Will & Emery.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by the Act, the Federal Trade Commission (“Commission”), having reason to believe that Respondents Reading Health System (“RHS”) and Surgical Institute of Reading (“SIR”), having executed an asset purchase agreement in violation of Section 5 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45, and which if consummated would violate Section 7 of the Clayton Act, as