

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF PUERTO RICO

**FEDERAL TRADE COMMISSION**  
**and**  
**THE COMMONWEALTH OF PUERTO RICO Plaintiffs,**

**v.**

**COLLEGE OF PHYSICIANS-SURGEONS OF PUERTO RICO, a corporation,**  
**CENTRALMED INC., a corporation,**  
**FAJARDO GROUP PRACTICE, INC. a corporation, and**  
**NORTE MED, INC., a corporation, Defendants.**

**CIVIL NO.**

**COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF**

Plaintiffs, the Federal Trade Commission ("Commission") and the Commonwealth of Puerto Rico allege as follows:

1. The Commission brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to secure a permanent injunction and other equitable relief against defendants College of Physicians-Surgeons of Puerto Rico ("College"); CentralMED, Inc.; Fajardo Group Practice, Inc.; and Norte Med, Inc. (the "corporate defendants"), for their unfair methods of competition in or affecting commerce in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).
2. The Commonwealth of Puerto Rico brings this action by their chief legal officer, the Attorney General of the Commonwealth of Puerto Rico, José A. Fuentes-Agostini ("PRAG"). The PRAG brings this action pursuant to his *parens patriae* authority and pursuant to Act No. 77 of June 25, 1964, as amended, 10 L.P.R.A. §§ 257-273 ("Act No. 77"), which is the Monopolistic Act of Puerto Rico, to secure injunctive relief and such other relief as may be appropriate.

**JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. §§ 45 (a) and 53(b), and 28 U.S.C. §§ 1331, 1337 (a), and 1345. The Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.
4. Venue in this district is proper under 15 U.S.C. § 53(b), and 28 U.S.C. § 1391(b) and (c). All defendants transact business in the district of Puerto Rico.
5. The corporate defendants and the College are in "commerce" within the meaning of Section 4 of the FTC Act, 15 U.S.C. § 44 and Act No. 77.

**THE PARTIES**

6. Plaintiff, the Federal Trade Commission, is an administrative agency of the United

States government established, organized, and existing pursuant to the FTC Act, 15 U.S.C. §§ 41, *et seq.*, with its principal offices at Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580. The Commission is vested with authority and responsibility for enforcing, *inter alia*, Section 5 of the FTC Act, and is authorized under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), to initiate court proceedings to enjoin violations of the FTC Act and to secure such other equitable relief as may be appropriate in each case.

7. The PRAG brings this action in its own name and as *parens patriae* on behalf of citizens of the Commonwealth of Puerto Rico. The violations of federal and state law alleged herein have caused loss and threaten loss to the general welfare and economy of the Commonwealth of Puerto Rico. Finally, the PRAG is authorized under Act No. 77 to secure injunctive relief and such other relief as may be appropriate.

8. Defendant College is a corporation organized, existing, and doing business under and by virtue of the laws of Puerto Rico. The College's office and principal place of business is located at 33 Bolivia Street, Poncebank Building, Seventh Floor, Hato Rey, Puerto Rico 00908. The more than 8,000 members of the College are physicians engaged in the practice of medicine in Puerto Rico. The College was created by the legislature of Puerto Rico in August 1994, and membership in the College is mandatory in order to practice medicine in Puerto Rico. The College is and has been, at all times relevant to this complaint, organized substantially for the profit of its members within the meaning of Section 4 of the Federal Trade Commission Act, as amended.

9. Corporate defendants are independent practice associations ("IPAs"), which contract with and compensate physicians who are members of the College. The corporate defendants are and have been, at all times relevant to this complaint, organized substantially for the profit of their members within the meaning of Section 4 of the Federal Trade Commission Act. They are:

(a) Fajardo Group Practice, Inc., which is a corporation organized, existing, and doing business under and by virtue of the laws of Puerto Rico. Its office and principal place of business is Call Box 70006, Fajardo, PR 00738.

(b) Norte Med, Inc., which is a corporation organized, existing, and doing business under and by virtue of the laws of Puerto Rico. Its office and principal place of business is Apartado 140040, Arecibo, PR 00619.

(c) CentralMED Inc., which is a corporation organized, existing, and doing business under and by virtue of the laws of Puerto Rico. Its office and principal place of business is Baldorioty #18, P.O. Box 829, Cidra, PR 00739.

## **BACKGROUND**

10. On September 7, 1993, the Puerto Rico legislature enacted the Puerto Rico Health Insurance Administration Act of 1993, Act No. 72, Article II ("Law 72"), which authorized the creation of the Administración de Seguros de Salud ("ASES"), a public corporation "responsible for implementing, administering and negotiating a health insurance system through contracts with insurance underwriters that will eventually give all island residents access to quality medical and hospital care, regardless of financial

condition and capacity to pay" ("the Reform"). Law 72 states that it is aimed at eliminating the inefficiency and poor quality of care associated with services provided at publicly owned health care facilities. According to Law 72, prior to the Reform there were two health systems that were considered by many to be unequal -- a private system for the people who could afford health insurance and a public system for the medically indigent. The Reform created a multi-million dollar market that attracted private insurers and large medical groups to offer quality patient care in private physician offices to previously uninsured indigent patients.

11. The Reform was originally financed by \$18 million from the Commonwealth Treasury, with additional funds from Federal Medicaid, other applicable Federal funds, contributions by employers and individual employees, and income from privatization funds (leases of government-owned medical-hospital facilities). Under the Reform, ASES has contracted with insurance companies to organize and provide services for Reform beneficiaries; each beneficiary selects a physician, who has contracted with the insurer to be a primary care provider. Physicians, or their medical groups, receive a fixed prepayment each month ("capitation") for promising to provide basic medical care to each patient. Currently, ASES budgets annually more than \$510 million for the payment of premiums to these insurers. All of the corporate defendants, and some of the their members, have contracted to provide services to Reform beneficiaries.

12. Except to the extent that competition has been restrained as alleged, members of the College, corporate defendants, and some or all of their members, are in competition with other physicians or with other IPAs in the provision of physician services.

13. At least 30% of the population of Puerto Rico is now eligible for physician services under the Reform. Over 30% of practicing physicians in Puerto Rico are participating physicians in the Reform. Physicians value participation in the Reform because it allows them to earn additional income by providing services to the medically indigent.

#### **DEFENDANTS' AGREEMENT TO BOYCOTT**

14. During 1996, pursuant to a request by the College for "dialogue meetings" with ASES, some of the officers of the corporate defendants met with ASES and presented 19 points, including demands that ASES recognize the College as the sole representative and bargaining agent of Puerto Rico physicians, allow the College to collectively negotiate contracts for physicians, give physicians more control over the distribution of Reform funds, and decrease financial risk held by the physicians.

15. Since at least August 1996, defendants combined and conspired with each other and with other physicians in Puerto Rico to:

- (a) Fix, stabilize, or tamper with the compensation that physicians in Puerto Rico receive for services provided to Reform patients;
- (b) Restrict, regulate, impede, or interfere with the reimbursement policies of ASES and insurers under the Reform; and
- (c) Negotiate collectively with ASES and insurers with respect to the pricing terms, health care cost containment measures, and reimbursement policies of

ASES and insurers.

16. In furtherance of the alleged combination and conspiracy, the College and each corporate defendant exerted coercive pressure, both directly and indirectly against ASES and insurers, by organizing a group boycott of Reform patients, as well as other patients, seeking non-emergency services.

17. Throughout the course of the conspiracy alleged in Paragraphs 15 through 16 above, each corporate defendant provided support to, and advised their member physicians of, the actions undertaken in furtherance of the combination and conspiracy to cease providing non-emergency medical services to patients. Defendant College held meetings with its member physicians in various locations of Puerto Rico to solicit a vote of the members to stop providing services to all non-emergency patients ("agreement to boycott"). The members of the College attending these meetings overwhelmingly voted in favor of the agreement to boycott. On October 29, 1996, the Board of Directors of the College voted to implement at least a 72-hour agreement to boycott.

18. On October 30, 1996, many members of defendant College, corporate defendants, and some or all of their members collectively closed their offices and ceased providing non-emergency services to Reform and other patients. On November 4, 1996, the College convened a special meeting, where its members voted to resolve that the agreement to boycott be continued indefinitely, throughout Puerto Rico, for all patients. In addition, some or all of its officers acted to further the agreement to boycott among College members, including taking measures to detect whether individual physicians were seeing patients in defiance of the College's agreement to boycott. Many College members joined the agreement to boycott because they feared the threat of ethical sanctions from the College, or a loss of patient referrals, if they did not participate. On November 6, 1996, the Board of Directors of the College voted to end the cessation of medical services, but called for a future boycott if the College failed to reach a satisfactory agreement with ASES on the terms of the renewal of Reform contracts between ASES and insurers.

### **THE EFFECTS OF DEFENDANTS' CONDUCT**

19. The acts and practices of the defendants, as herein alleged, have had the purpose or effect, or the tendency or capacity, to restrain competition unreasonably and to injure competition in Puerto Rico in the following ways, among others:

- (a) Restraining competition among physicians;
  - (b) Fixing, stabilizing, or otherwise tampering with the prices that are paid to physicians who provide medical services;
  - (c) Raising the cost to insurers and ASES of the Reform's medical services;
  - (d) Depriving consumers of access to medical care on a timely and coordinated basis;
  - (e) Depriving ASES and insurers of the benefits of competition among physicians;
- and

(f) Depriving consumers of the benefits of independently determined reimbursement policies and health care cost containment efforts of ASES and insurers.

### **DEFENDANTS' VIOLATIONS OF SECTION 5 OF THE FTC ACT**

20. The combination or conspiracy and the acts and practices of the defendants, as herein alleged, constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. The violation or the effects thereof, as herein alleged, are continuing and will continue or recur in the absence of the relief herein requested, and were and are all to the prejudice and injury of the public.

#### **First Count**

21. Plaintiff Commission realleges and incorporates by reference paragraphs 14 through 19, *supra*.

22. Defendants' actions to conspire or to combine with others to fix, stabilize, tamper with, or otherwise manipulate the amount or distribution of capitation and reimbursement policies under the Reform in 1996, and to gain recognition of defendant College as the sole bargaining agent for Puerto Rico physicians, constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the FTC Act.

#### **Second Count**

23. Plaintiff Commission realleges and incorporates by reference paragraphs 14 through 19, *supra*.

24. By organizing a price-related group boycott, defendants have engaged in unfair methods of competition in or affecting commerce in violation of Section 5 of the FTC Act.

### **DEFENDANTS' VIOLATIONS OF COMMONWEALTH OF PUERTO RICO LAW**

25. Plaintiff PRAG realleges and incorporates by reference paragraphs 14 through 19, *supra*.

26. Section 2 of the Monopolistic Act of Puerto Rico, Act No. 77, prohibits contracts or combinations in the form of trust or otherwise, or conspiracy in unreasonable restraint of trade or commerce in the Commonwealth of Puerto Rico.

27. By engaging in the acts and practices alleged above, defendants have engaged in an unlawful contract, combination or conspiracy in violation of Act No. 77.

### **THE COURT'S POWER TO GRANT RELIEF**

28. Section 13(b) of the FTC Act empowers this Court to issue injunctive relief against violations of the FTC Act and, in the exercise of its equitable jurisdiction, to order other

ancillary equitable relief, including restitution, to remedy the injury caused by defendants' violations. The PRAG is authorized under Act No. 77, § 13A to secure injunctive relief and such other relief as may be appropriate.

### **PRAYER FOR RELIEF**

WHEREFORE the Commission requests that this Court, as authorized by 15 U.S.C. § 53 (b), 15 U.S.C. § 26, Act No. 77, 10 L.P.R.A. §§ 257-273 and pursuant to its own equitable powers:

(1) Permanently enjoin defendants from violating Section 5(a) of the FTC Act and Act No. 77, 10 L.P.R.A. §§ 257-273; and

(2) Award such other relief, including restitution, as the Court finds necessary to redress defendants' violations of Section 5(a) of the FTC Act and Act No. 77 as herein alleged.

San Juan, Puerto Rico, this day of 1997.

RESPECTFULLY SUBMITTED,

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