

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.

FINAL ORDER AND STIPULATED PERMANENT INJUNCTION

Whereas plaintiffs Federal Trade Commission ("Commission") and the Commonwealth of Puerto Rico, by its attorney, José Fuentes Agostini, Attorney General of the Commonwealth of Puerto Rico ("PRAG"), have filed their Complaint against defendants College of Physicians-Surgeons of Puerto Rico ("College"); CentralMED, Inc.; Fajardo Group Practice, Inc.; and Norte Med, Inc., by the Commission pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §53 (b), seeking injunctive and other equitable relief for violations of Section 5 of the FTC Act, 15 U.S.C. § 45; and by the PRAG under 10 L.P.R.A. §§ 257-273 to secure injunctive relief and such other relief as may be appropriate; whereas the Complaint charges defendants with concerted anticompetitive conduct in violation of Section 5 of the FTC Act and in violation of 10 L.P.R.A. §§ 257-273 based on allegations of price-fixing and a concerted refusal to deal and group boycott; whereas the Commission, PRAG, and defendants have stipulated and agreed to entry by the Court, without further notice, of the following permanent injunction; whereas this Order is entered for settlement purposes only and does not constitute any evidence against or an admission of liability by the defendants; and whereas the Court being advised in the premises, finds:

1. The Commission brings this action under Sections 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b). The Complaint sought permanent injunctive and other equitable relief for alleged unfair methods of competition by defendants in connection with the sale and marketing of physician services. Pursuant to Section 13(b), the Commission has authority to seek the relief it has requested.
2. The Commonwealth of Puerto Rico brings this action by their chief legal officer, the Attorney General of the Commonwealth of Puerto Rico, José Fuentes Agostini ("PRAG"). The PRAG brings this action pursuant to his *parens patriae* authority and pursuant to 10 L.P.R.A. §§ 257-273.
3. The Commission and PRAG allege that defendants engaged in unfair methods of competition as set forth in paragraphs 14 to 19 of the Commission's and PRAG's Complaint.

4. This Court has jurisdiction over the parties and the subject matter of this action. Venue in the District of Puerto Rico is proper. The Complaint states a claim upon which relief may be granted against defendants under Sections 5 and 13 (b) of the FTC Act and 10 L.P.R.A. §§ 257-273.
5. The activities of defendants are in or affecting commerce, as defined in 15 U.S.C. § 44.
6. This is a proper case for the issuance of a permanent injunction pursuant to Section 13 (b) of the FTC Act.
7. Defendants freely and without coercion waive all rights to appeal or otherwise challenge or contest the validity of the Final Order and Stipulated Permanent Injunction, and any claim under the Equal Access to Justice Act, 28 U.S.C. § 2412.
8. Defendants, without admitting the allegations set forth in the Commission's and PRAG's Complaint or that it has violated Section 5 of the FTC Act or 10 L.P.R.A. §§ 257-273, agree to entry of this Order under Section 13(b) of the FTC Act.

I.

DEFINITIONS

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

- A. "Defendant College" means College of Physicians-Surgeons of Puerto Rico, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, affiliates, and groups controlled by defendant College, and their respective directors, officers, employees, agents, representatives, successors, and assigns.
- B. "Corporate defendants" means CentralMED, Inc. (including its affiliate CentralMED Physicians Group, C.S.P.), Fajardo Group Practice, Inc., and Norte Med, Inc., their directors, officers, employees, agents, representatives, predecessors, successors, and assigns; their subsidiaries, divisions, affiliates, and groups controlled by corporate defendants, and their respective directors, officers, employees, agents, representatives, successors, and assigns.
- C. "Commission" means the Federal Trade Commission.
- D. "Third-party payer" means any person, corporation, government agency, or other entity that agrees to pay for or reimburse all or part of any expense for physician services incurred by another person or group of persons. Third-party payer includes, but is not limited to, La Cruz Azul de Puerto Rico, PCA Health Plans of Puerto Rico, Inc., United HealthCare Plans of Puerto Rico, Inc., Triple-S, Inc., and the Administración de Seguros de Salud of Puerto Rico.
- E. "Reimbursement" means money paid by a third-party payer for a physician's services.

F. "Participation agreement" means any agreement between a third-party payer and a physician or physicians' group, in which the third-party payer agrees to pay the physician or physicians' group for the provision of physicians' services, and in which the physician or physicians' group agrees to accept payment from the third-party payer for the provision of physicians' services.

G. "Qualifying integrated joint venture" means a joint venture to provide health care services in which all physicians participating in the venture who would otherwise be competitors share a substantial risk of loss from their participation in the venture through:

1. agreement by the venture to provide services to a third-party payer at a capitated rate;
2. agreement by the venture to provide designated services or classes of services to a third-party payer for a predetermined percentage of premium or revenue from the payer;
3. use by the venture of significant financial incentives for its physician participants, as a group, to achieve specified cost-containment goals; or
4. agreement by the venture to provide a complex or extended course of treatment to patients that requires the substantial coordination of care by physicians in different specialties offering a complementary mix of services, for a fixed, predetermined payment, where the costs of that course of treatment for any individual patient can vary greatly due to the individual patient's condition, the choice, complexity, or length of treatment, or other factors.

II.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the defendant College and corporate defendants, directly or indirectly, or through any corporate or other device, in connection with the provision of physician services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from entering into, attempting to enter into, threatening, attempting to threaten, organizing, attempting to organize, implementing, attempting to implement, continuing, attempting to continue, facilitating, attempting to facilitate, ratifying, or attempting to ratify any combination, contract, agreement, understanding, or conspiracy, express or implied, between or among any physicians to:

- A. boycott or refuse to deal with any third-party payer, or to withdraw from, threaten to withdraw from, refuse to enter into, or threaten to refuse to enter into any proposed or existing participation agreement;
- B. refuse to provide, or to threaten to refuse to provide, services to persons enrolled, covered, or served by any third-party payer; or
- C. negotiate the amount, manner of calculating, or terms of reimbursement or conditions of any participation agreement.

PROVIDED, HOWEVER, that nothing in this Order shall prevent the corporate defendants from forming, facilitating the formation of, participating in, or negotiating contracts with any third-party payer on behalf of any qualifying integrated joint venture or a joint venture that has received the prior approval of the Commission.

III.

IT IS FURTHER ORDERED that for a period of five (5) years from the date this Order is entered, defendant College shall be enjoined from:

A. continuing a formal or informal meeting of the Board of Directors of the defendant College after any person makes any statement concerning one or more physicians' intentions or decisions, that if agreed to would violate Paragraph II of this Order, unless defendant College immediately ejects such person from the meeting;

B. encouraging, advising, pressuring, inducing, or attempting to induce any person to engage in any action prohibited by this Order.

IV.

IT IS FURTHER ORDERED that nothing in this Order shall be construed to prevent defendant College or corporate defendants from exercising rights permitted under the First Amendment to the United States Constitution to petition any federal, state, or Commonwealth government executive agency or legislative body concerning legislation, rules, programs, or procedures, or to participate in any federal, state or Commonwealth administrative or judicial proceeding, or from communications reasonably necessary to develop a position or communicate with College members about positions presented to any federal, state, or Commonwealth government executive agency.

PROVIDED, FURTHER, that nothing contained in this Order shall prohibit defendant College or corporate defendants from communicating purely factual information describing the terms and conditions of any participation agreement or operations of any third-party payer or from expressing views relevant to various health plans provided that such factual information or views are not undertaken to invite, initiate, encourage, or facilitate any actual or threatened refusal to deal or any other provision of this Order.

V.

IT IS FURTHER ORDERED that the defendant College shall pay three hundred thousand dollars (\$300,000) to the Department of Health of the Government of Puerto Rico, to be deposited in a special fund for catastrophic events, to be paid in a first installment of \$150,000 within thirty days after this Order is entered and in a second installment of \$150,000 within six months after the date this Order is entered.

VI.

IT IS FURTHER ORDERED that:

A. The defendant College, within sixty (60) days from the date this Order is

entered, distribute by first-class mail a copy of this Order and the accompanying Complaint to each third-party payer that is participating in the Health Reform.

B. The defendant College, within sixty (60) days from the date this Order is entered, publish in Spanish this Order and the accompanying Complaint in an issue of the College's official publication, *El Galeno*, that will be distributed to all College members, in the same type size normally used for articles that are published in that publication.

C. The defendant College, for a period of five (5) years from the date this Order is entered, provide each new member of the College with a copy of this Order at the time the member is accepted into membership of the College.

D. The defendant College and each corporate defendant, for a period of five (5) years from the date this Order is entered, maintain and make available to Commission staff and PRAG, for inspection and copying upon reasonable notice, records sufficient to describe in detail any action taken in connection with the activities covered by this Order.

E. The defendant College and each corporate defendant each file a verified, written report with the Commission and PRAG within ninety (90) days from the date this Order is entered, and annually thereafter for five (5) years on the anniversary of the date this Order is entered, and at such other times as the Commission or PRAG may require, by written notice to the defendants, setting forth in detail the manner and form in which the defendants have complied and are complying with this Order.

F. For a period of five (5) years from the date this Order is entered, the defendant College and the corporate defendants, each notify the Commission and PRAG at least thirty (30) days prior to any proposed change in their organization, such as the dissolution, assignment, or sale resulting in the emergence of a successor corporation or association; the creation or dissolution of subsidiaries; or any other change in the corporation that may affect compliance obligations arising out of this Order.

VII.

IT IS FURTHER ORDERED that each party shall bear its own costs and attorneys' fees.

VIII.

IT IS FURTHER ORDERED that the Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

San Juan, Puerto Rico, this ___ day of _____ 1997.

UNITED STATES DISTRICT JUDGE