

La Sección de Fisiatría or La Asociación Médica;

F. La Sección de Fisiatría and La Asociación Médica each file a verified, written report with the Commission within ninety (90) days after the date on which this order becomes final, and annually thereafter for five (5) years on the anniversary of the date on which this order becomes final, and at such other times as the Commission may require, by written notice to La Sección de Fisiatría or La Asociación Médica, setting forth in detail the manner and form in which it has complied and is complying with this order;

G. La Sección de Fisiatría and La Asociación Médica for a period of five (5) years after the date on which this order becomes final, maintain and make available to Commission staff, for inspection and copying upon reasonable notice, records sufficient to describe in detail any action taken in connection with the activities covered by Parts II and IV of this order;

H. For a period of five (5) years after the date on which this order becomes final, La Sección de Fisiatría and La Asociación Médica notify the Commission at least thirty (30) days prior to any proposed change in La Sección de Fisiatría or La Asociación Médica, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or association, a change of name, a change of address, or any other change that may affect compliance obligations with this order.

It is further ordered that this order shall terminate on March 30, 2015.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from La Asociación Médica de Puerto Rico ("La Asociación Médica"), an unincorporated association; La Sección de Fisiatría de la Asociación Médica de Puerto Rico ("La Sección de Fisiatría"), an unincorporated association; Rafael L. Oms, M.D.; and Rafael E. Seín, M.D.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that La Asociación Médica, La Sección de Fisiatría, Dr. Oms, Dr. Seín, and others

have restrained competition among physiatrists by conspiring to engage in a concerted refusal to deal with La Administración de Compensaciones por Accidentes de Automóviles ("Administration for Compensation of Automobile Accidents" or "ACAA") or to treat ACAA Patients. ACAA is a third-party payer that provides health coverage to automobile accident victims in Puerto Rico. The complaint alleges that this conduct violates section 5 of the Federal Trade Commission Act.

The respondents have signed a consent agreement that prohibits them from engaging in unlawful concerted action. Paragraph A of Section II prohibits the respondents from entering into, threatening or attempting to enter into, organizing or attempting to organize, encouraging, continuing, cooperating, in, or carrying out any agreement with an insurer. Paragraph B is similar to Paragraph A, but prohibits refusals or threats to refuse to provide services to patients covered by any insurer. The complaint alleges that the physiatrists attempted to coerce ACAA through a concerted refusal to treat certain patients insured by ACAA.

Paragraphs C, D, E, and F of Section II are fencing-in paragraphs intended to prevent the respondents from engaging in actions that might in the future facilitate a concerted refusal to deal with an insurer of covered patients. The fencing-in provisions of Section II shall terminate five years after the date of issuance of the order. Paragraph C prohibits the respondents from continuing any meeting of physiatrists at which any person makes a statement about intentions or decisions with respect to entry into, withdrawal from, or refusal to provide services to patients in connection with any participation agreement, unless such person is ejected from the meeting by La Asociación Médica and La Sección de Fisiatría. Paragraph C also prohibits respondents from continuing any meeting at which two persons make such statements. Although Drs. Oms and Seín are not required to eject a person from a meeting, Drs. Oms and Seín are required to leave any meeting at which any person makes a statement about intentions or decision with respect to entry into, withdrawal from, or refusal to provide services to patients in connection with any participation agreements, unless such person is ejected from the meeting by La Asociación Médica and La Sección de Fisiatría; or at which two persons makes such statements. After Drs. Oms and Seín leave such a meeting, they are required to report to the Commission the circumstances of the meeting.

Paragraph D of Section II prohibits respondents from providing advice to any physiatrist on the desirability or appropriateness of participating in or refusing to provide services to patients covered by any insurer's program (but permits purely factual communications describing the terms of a participation agreement). Paragraph E prohibits respondents from communication to any physiatrist information concerning any other physiatrist's intention or decision with respect to entry into, withdrawal from, or refusal to provide services to patients covered by any participation agreement. Paragraph F prohibits respondents from soliciting information from any physiatrist concerning that person's or any other physiatrist's intention or decision with respect to entry into, withdrawal from, or refusal to provide services to patients covered by any participation agreement.

Section II contains a provision stating that the order does not impair respondents' First Amendment rights to petition the government. Section I also contains another proviso stating that the order does not prevent respondents or association members from forming physician partnerships or professional corporations.

Section III of the proposed order makes clear that the order does not prevent individual respondents Drs. Oms or Seín from communicating medical conditions or personal assessments of individual patients, where such communication neither constitutes nor is part of (1) an agreement among physiatrists to boycott or refuse to deal with any third-party payer, or (2) any other agreement, combination, or conspiracy the purpose, effect, or likely effect of which is to impede competition unreasonably.

Section IV of the proposed order contains standard notification and compliance provisions. These notification, reporting, and record keeping requirements apply only to La Asociación Médica and La Sección de Fisiatría.

Finally, Section V of the proposed order contains a twenty year "sunset" provision. Under this section, the terms of the order shall terminate twenty years after the date of issuance of the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,
Secretary.

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