

members of the medical staff of Grossmont Hospital in La Mesa, a municipality in central San Diego County, California. ASMG and GAS anesthesiologists make up approximately 75 percent of the anesthesiologists with active medical staff privileges at Grossmont Hospital and work on approximately 70 percent of the cases that require anesthesia services at the hospital.

Anesthesiologists provide anesthesia services to patients primarily at general acute care hospitals and outpatient surgery centers. Those services include evaluating a patient before surgery, consulting with the surgical team, providing pain control and support-of-life functions during surgery, supervising care after surgery in the recovery unit, and medically discharging the patient from the recovery unit. In addition to working on scheduled surgical procedures, anesthesiologists work on unscheduled obstetric and emergency cases at general acute care hospitals. An anesthesiologist who remains available to work on unscheduled cases is said to be "taking call."

Anesthesiologists in San Diego County are reimbursed for their services from several sources. Health insurance companies and other third-party payors typically reimburse anesthesiologists for services rendered to their subscribers during scheduled and unscheduled medical procedures and obstetrical cases through contracts that establish fees and other competitively significant terms. In addition, some hospitals pay anesthesiologists "stipends" for taking call and/or for rendering services to uninsured patients. Some hospitals pay anesthesiologists stipends through contracts that establish a stipend amount and other competitively significant terms.

Absent agreements among competing anesthesiologists, competing anesthesiologists or anesthesiology groups decide independently whether to seek a stipend from a hospital and the amount of the stipend. They also decide independently whether they will terminate or restrict the services they provide to unscheduled or uninsured patients if the hospital refuses to pay them a stipend or if they are dissatisfied with the stipend.

From as early as February 2001 through March 2002, ASMG and GAS discussed between themselves a joint strategy to secure stipends from Grossmont Hospital for taking obstetric call and for rendering services to uninsured emergency room patients. Eventually, ASMG and GAS agreed on the stipend amount both groups would

demand from the hospital for taking obstetric call. ASMG and GAS also discussed reducing their hours of availability for taking call to increase their negotiating power with the hospital. Furthermore, they agreed to maintain a solid front against the hospital to prevent the hospital from (1) negotiating separately with each group to reduce the amount of the stipend or (2) seeking services solely from one group to the exclusion of the other. ASMG and GAS ceased this collusive activity only after the Commission contacted them about this conduct. While the Commission's investigation prevented any anticompetitive effects from occurring, this conduct is a naked restraint, which constitutes an unfair method of competition in violation of section 5 of the FTC Act.

#### *The Proposed Consent Order*

The proposed consent order is designed to prevent recurrence of the illegal concerted actions alleged in the complaint while allowing Respondent to engage in legitimate joint conduct.

Paragraph II.A prohibits Respondent from entering into or facilitating agreements between or among medical practices: (1) To negotiate, to fix, or to establish any fee, stipend, or any other term of reimbursement for the provision of anesthesia services; (2) to deal, to refuse to deal, or to threaten to refuse to deal with any payor of anesthesia services; or (3) to reduce, or to threaten to reduce, the quantity of anesthesia services provided to any purchaser of anesthesia services. A "medical practice" is defined as a bona fide, integrated business entity in which physicians practice medicine together as partners, shareholders, owners, members, or employees, or in which only one physician practices medicine.

Paragraph II.B prohibits Respondent from attempting to engage in any action prohibited by Paragraph II.A. Paragraph II.C prohibits Respondent from encouraging, pressuring, or attempting to induce any person to engage in any action that would be prohibited by Paragraphs II.A and II.B.

Paragraph II contains a proviso that allows Respondent to engage in conduct that is reasonably necessary to the formation or operation of a "qualified risk-sharing joint arrangement" or a "qualified clinically-integrated joint arrangement." To be a "qualified risk-sharing joint arrangement," an arrangement must satisfy two conditions. First, all participating providers must share substantial financial risk through the arrangement and thereby create 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. To be a "qualified clinically-integrated joint arrangement," an arrangement must satisfy two conditions. First, all participants must join in active and ongoing programs to evaluate and modify their clinical practice patterns, creating a high degree of interdependence and cooperation among providers to control costs and ensure the quality of services provided. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement. Both definitions reflect the analyses contained in the 1996 FTC/DOJ Statements of Antitrust Enforcement Policy in Health Care.

Paragraphs III through V of the proposed order are reporting and compliance provisions. Paragraph VI is a provision "sunsetting" the order after 20 years.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

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## FEDERAL TRADE COMMISSION

[File No. 021 0006]

### Grossmont Anesthesia Services Medical Group, Inc.; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before June 30, 2003.

**ADDRESSES:** Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to:

*consentagreement@ftc.gov*, as prescribed in the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** John Wiegand or Kerry O'Brien, FTC Western Regional Office, 901 Market St., Suite 570, San Francisco, CA 94103, (415) 848-5100.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 30, 2003), on the World Wide Web, at "<http://www.ftc.gov/os/2003/05/index.htm>." A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii).

#### **Analysis of Agreement Containing Consent Order to Aid Public Comment**

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an agreement containing a proposed consent order with Grossmont Anesthesia Services Medical Group, Inc. ("GAS" or "Respondent"). The agreement settles charges that

Respondent violated section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by facilitating and implementing agreements with Anesthesia Service Medical Group, Inc. ("ASMG") on fees, quantity of anesthesia services provided, and other competitively significant 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 Allegations*

GAS and ASMG are competing anesthesiology groups that provide anesthesia services for a fee to patients in San Diego County, California. ASMG employs approximately 180 anesthesiologists. GAS is composed of approximately 10 anesthesiologists. GAS and ASMG anesthesiologists are members of the medical staff of Grossmont Hospital in La Mesa, a municipality in central San Diego County, California. GAS and ASMG anesthesiologists make up approximately 75 percent of the anesthesiologists with active medical staff privileges at Grossmont Hospital and work on approximately 70 percent of the cases that require anesthesia services at the hospital.

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By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary, Assistant Secretary for Planning and Evaluation; Notice of Funding Availability for Policy and Research Grants (State Innovation Grants)

**AGENCY:** The Office of the Assistant Secretary for Planning and Evaluation (ASPE), HHS.

**ACTION:** Notice of grant competition.

**SUMMARY:** The Office of the Assistant Secretary for Planning and Evaluation announces its intention to conduct a grant competition for ASPE State Innovation Demonstration Grants. This competition is limited to current recipients of FY 2002 ASPE State Innovation Planning Grants.

*The Catalog of Federal Domestic Assistance Number:* The CFDA number is 93.239.

*Closing Date:* The closing date for submitting applications under this announcement is August 18, 2003. Please email Brenda Benesch at [Brenda.Benesch@hhs.gov](mailto:Brenda.Benesch@hhs.gov) by July 8, 2003 to inform the government of your intent to submit an application. Please include the proposed title of the project and the name of the agency submitting the application. Providing notice of intent to submit is not a requirement for submitting an application. However, a notice of intent to submit will help the federal government in planning for the review process.

*Mailing Address:* Applications should be submitted *to be determined*.

You will receive email confirmation to notify you that your application was received within 14 days of the closing date. If you do not receive confirmation within 14 days of the closing date, please contact *to be determined* at the address above.

The printed **Federal Register** notice is the only official program announcement.

**FOR FURTHER INFORMATION CONTACT:** Administrative questions should be directed *to be determined* at the address or phone number listed above.

Administrative questions will be accepted and responded to up to ten working days prior to closing date of receipt of applications. Technical questions should be directed to Brenda Benesch, either by telephone (202-260-0382), fax (202-690-6562), e-mail ([Brenda.Benesch@hhs.gov](mailto:Brenda.Benesch@hhs.gov)) or in writing at the following address, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW., Room 450G, Hubert H. Humphrey Building, Washington, DC 20201. If you send your question(s) in writing, please call to confirm receipt. Technical questions will be accepted and responded to up to ten working days prior to the closing date of receipt of applications.

*Application Materials:* Application materials are included in this package and are also available from the ASPE World Wide Web site: <http://aspe.hhs.gov/funding.htm> or by calling *to be determined*.

**SUPPLEMENTARY INFORMATION:** This program announcement consists of five parts: Part I: Background—Legislative authority, Background information, Purpose, Technical assistance and process evaluation; Part II: Project and Applicant Eligibility—Eligible applicants, Available funds, Budget and project period, and Matching requirements; Part III: The Review Process—Intergovernmental review, Initial screening, and Competitive review and evaluation criteria; Part IV: The Application—Application development, Application submission, Disposition of applications, and Components of a complete application; Part V: Questions and Answers.

#### Part I. Background

##### A. Legislative Authority

This announcement is authorized by section 1110 of the Social Security Act (42 U.S.C. 1310) and section 310 of the Public Health Service Act and awards will be made from funds appropriated under the Consolidated Appropriations Resolution, 2003 (Pub. L. 108-7).

##### B. Background Information

In FY 2002 ASPE awarded state innovation demonstration grants to five states and planning grants to ten states to help them implement or develop innovative approaches for providing health and human services more efficiently. Planning grants were awarded for up to a 17-month project period. The following planning grants were awarded:

- Alaska Department of Health and Social Sciences— "Planning for