UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
Thomas B. Leary
Pamela Jones Harbour
Jon Leibowitz

In the Matter of	)	
WHITE SANDS HEALTH CARE SYSTEM, L.L.C., a limited liability company,	)	
ALAMOGORDO PHYSICIANS' COOPERATIVE, INC., a cooperative association,	)	**Docket No. C-4130**
DACITE, INC., a corporation,	)	
and	)	
JAMES R. LAURENZA, individually.	)	

ORDER REOPENING AND MODIFYING ORDER

Individual respondent, James Laurenza, president of respondent Dacite, Inc. ("Dacite"), has filed, on May 31, 2005, a petition to reopen and modify the Order ("Petition"), to eliminate his obligations under Paragraph VII of the Order. Paragraph VII requires him to provide certain information, when that information is not otherwise provided by respondent White Sands Health Care System, L.L.C. ("White Sands") or respondent Alamogordo Physicians Cooperative, Inc. ("Alamogordo Physicians"). Mr. Laurenza's Petition, filed pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.51, asks the Commission to relieve him of the obligation to comply with Paragraphs V and VI of the Order, to the extent that White Sands and Alamogordo Physicians, respectively, fail to meet their compliance obligations. These ongoing obligations would otherwise continue until January 24, 2008, three years from the date the Order became final. Mr. Laurenza contends, inter alia, that significant changed circumstances, to wit the severance of his relationship with White Sands and Alamogordo Physicians, make him

unable to continue to comply with Paragraph VII of the Order. Petition at 1. The Petition was placed on the public record for thirty days pursuant to Section 2.51(c) of the Commission's Rules. No comments were received. For the reasons stated below, the Commission has determined to grant the Petition.

The Complaint issued with the Order in Docket No. C-4130 alleges that White Sands is a for-profit physician-hospital organization that consists of a non-profit hospital; Alamogordo Physicians, an independent practice association; and other non-physician licensed health care professionals that include certified registered nurse anesthetists. (Complaint ¶ 2). According to the Complaint, Mr. Laurenza, as general manager of White Sands, and through his company Dacite, negotiated with payors on behalf of White Sands' nurse anesthetist members and Alamogordo Physicians' physician members, although the nurse anesthetist members were otherwise in competition with each other and the physician members of Alamogordo Physicians were otherwise in competition with each other for the provision of health care services in the Alamogordo area for a fee. (Complaint ¶ 7). Further, White Sands' physician and nurse anesthetist members had agreed with each other and with White Sands not to deal individually, or through any other organization besides White Sands, with any payor with which White Sands was attempting to negotiate a contract jointly on behalf of White Sands' members. (Complaint ¶ 20).

The Complaint alleges that Respondents' actions have had, or tend to have, the effect of restraining trade unreasonably in the provision of physician and nurse anesthetist services in the Alamogordo area, and that the described combination, conspiracy, acts and practices constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. (Complaint ¶ 35). The Order was issued to prevent respondents from continuing to engage in such anticompetitive activities. (Order ¶ II). The Order further requires a three-year cooling off period during which respondents Dacite and Laurenza are prohibited from negotiating on behalf of, or advising, respondents White Sands, Alamogordo Physicians, or any provider who participates or has participated in those entities. (Order ¶ III). Paragraph IV of the Order requires specified notification from each respondent prior to entering into any messenger arrangement with any provider. Paragraphs V.A through V.E. specify White Sands' mailing, termination, notification, and compliance obligations. Although White Sands already has complied with Paragraphs V.A through V.C of the Order, its compliance obligations under Paragraph IV and Paragraphs V.D and V.E continue for three years from the date the Order becomes final, or until January 24, 2008. Paragraphs V.F. and VI specify, respectively, White Sands' and Alamogordo Physicians' notification obligations related to corporate changes that may affect compliance obligations. These Order requirements continue until the Order terminates on January 11, 2025. The remaining paragraphs of the Order relate to obligations of each respondent and are unaffected by the severance of Mr. Laurenza's relationship with White Sands.

At issue is Paragraph VII of the Order, which provides that

> . . . if neither Respondent White Sands nor Respondent Alamogordo Physicians complies with all or any portion of Paragraphs V.A through V.F of this Order, or if Respondent Alamogordo Physicians fails to comply with Paragraph VI of this Order, within sixty (60) days of the times set forth in those paragraphs, then Respondent Laurenza shall, within thirty (30) days thereafter, comply with those portions of Paragraphs V.A through V.F and Paragraph VI of this Order with which Respondent White Sands or Respondent Alamogordo Physicians did not comply.

The Petition states that, effective March 31, 2005, the relationship between Dacite and White Sands was severed so that Mr. Laurenza no longer will have access to the information necessary for him to comply with Paragraph VII, should White Sands or Alamogordo Physicians fail to satisfy any of the obligations that would trigger the application of that paragraph. Petition at 1.

The Order may be reopened on the grounds set forth in Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), 16 C.F.R. § 2.51(b). Section 5(b) provides that the Commission shall reopen an order to consider whether it should be set aside if the respondent "makes a satisfactory showing that changed conditions of law or fact" so require.[1] A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of it inequitable or harmful to competition.[2] Where changed circumstances do not require reopening, Section 5(b) further provides that the Commission may reopen and set aside an order when it determines that the public interest so requires. The public interest standard was not raised in the Petition, and, in this instance, we do not need to assess the public interest standard, because the Commission has determined that Mr. Laurenza has made the requisite satisfactory showing that changed conditions of fact require the Order to be reopened and modified.

Upon consideration of Mr. Laurenza's Petition and other information, the Commission has determined that the factual premise underlying the requirement that Mr. Laurenza comply

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[1] *See Supplementary Information, Amendment to* 16 CFR 2.51(b), announced August 15, 2001, ("Amendment").

[2] S. Rep. No. 96-500, 96th Cong., 2d Sess. 9 (1979) (significant changes or changes causing unfair disadvantage); *Louisiana-Pacific Corp.*, Docket No. C-2956, Letter to John C. Hart (June 5, 1986), at 4 (unpublished) ("Hart Letter"). *See also United States v. Louisiana-Pacific Corp.*, 967 F.2d 1372, 1376-77 (9th Cir. 1992) ("A decision to reopen does not necessarily entail a decision to modify the Order. Reopening may occur even where the petition itself does not plead facts requiring modification.").

with those portions of the Order with which White Sands or Alamogordo Physicians fail to comply no longer exists. The severing of the relationship between Mr. Laurenza and White Sands substantially changes Mr. Laurenza's ability to comply with his continuing obligations regarding White Sands' and Alamogordo Physicians' compliance.

For these reasons, the Commission finds that changed conditions of fact warrant reopening and modifying the Order to set aside Paragraph VII. This action in no way modifies or affects the obligations of respondents White Sands or Alamogordo Physicians. Accordingly,

IT IS ORDERED that this matter be, and it hereby is, reopened; and

IT IS FURTHER ORDERED that the Commission's Order issued on January 11, 2005, hereby is, as of the date of issuance of this Order, modified to set aside Paragraph VII.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: September 13, 2005