

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Timothy J. Muris, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

In the Matter of)
) Docket No. C-
)
ANESTHESIA SERVICE MEDICAL)
GROUP, INC.,)
a corporation.)
)
)

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of certain acts and practices of Anesthesia Service Medical Group, Inc., hereinafter sometimes referred to as “Respondent,” and Respondent having been furnished thereafter with a copy of the draft of Complaint that the Commission staff proposed to present to the Commission for its consideration and which, if issued, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order to Cease and Desist (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues the following Order:

1. Respondent Anesthesia Service Medical Group, Inc. is a professional corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 3626 Ruffin Road, San Diego, CA 92123.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent, and the proceeding is in the public interest.

ORDER

I.

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

- A. “Respondent” means Anesthesia Service Medical Group, Inc., its officers, directors, employees, agents, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by Anesthesia Service Medical Group, Inc., and the respective officers, directors, employees, agents, representatives, successors, and assigns of each.
- B. “Person” means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.
- C. “Physician” means a doctor of allopathic medicine (“M.D.”) or a doctor of osteopathic medicine (“D.O.”).
- D. “Medical Practice” means 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.
- E. “Payor” means any Person that pays, or arranges for payment, for all or any part of any Physician services for itself or for any other Person.
- F. “Participate” in an entity means (1) to be a partner, shareholder, owner, member, or employee of such entity, or (2) to provide services, agree to provide services, or offer to provide services, to a Payor through such entity. (This definition also applies to all tenses and forms of the word “participate,” including, but not limited to, “participating,” “participated,” and “participation.”)
- G. “Qualified risk-sharing joint arrangement” means an arrangement to provide Physician services in which:

1. all Physicians who participate in the arrangement share substantial financial risk through their participation in the arrangement and thereby create incentives for the Physicians who participate to jointly control costs and improve quality by managing the provision of Physician services, such as risk-sharing involving:
 - a. the provision of Physician services to Payors at a capitated rate,
 - b. the provision of Physician services for a predetermined percentage of premium or revenue from Payors,
 - c. the use of significant financial incentives (e.g., substantial withholds) for Physicians who participate to achieve, as a group, specified cost-containment goals, or
 - d. the provision of a complex or extended course of treatment 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; and
 2. any agreement concerning reimbursement or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies through the joint arrangement.
- H. "Qualified clinically-integrated joint arrangement" means an arrangement to provide Physician services in which:
1. all Physicians who participate in the arrangement participate in active and ongoing programs of the arrangement to evaluate and modify the practice patterns of, and create a high degree of interdependence and cooperation among, the Physicians who participate in the arrangement, in order to control costs and ensure the quality of services provided through the arrangement; and
 2. any agreement concerning reimbursement or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies through the joint arrangement.

II.

IT IS FURTHER ORDERED that Respondent, directly or indirectly, or through any corporate or other device, in connection with the provision of anesthesia services in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, cease and desist from:

- A. Entering into, adhering to, participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding between or among any 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;
- B. Attempting to engage in any action prohibited by Paragraph II.A. above; and
- C. Encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any Person to engage in any action that would be prohibited by Paragraph II.A. and II.B. above.

PROVIDED, HOWEVER, that nothing in this Paragraph shall prohibit any agreement involving, or conduct by, Respondent that is reasonably necessary to form, participate in, or take any other action in furtherance of a qualified risk-sharing joint arrangement or a qualified clinically-integrated joint arrangement.

III.

IT IS FURTHER ORDERED that Respondent shall:

- A. Within thirty (30) days after the date on which this Order becomes final, distribute by first-class mail a copy of this Order and the Complaint to:
 - 1. each Physician who participates in Respondent, and
 - 2. each officer, director, manager, and employee of Respondent;

- B. For a period of three (3) years after the date this Order becomes final,
1. Distribute a copy of this Order and the Complaint to:
 - a. each Physician who begins participating in Respondent, and who did not previously receive a copy of this Order and the Complaint from Respondent, within thirty (30) days of the time that such participation begins, and
 - b. each person who becomes an officer, director, manager, and employee of Respondent, and who did not previously receive a copy of this Order and the Complaint from Respondent, within thirty (30) days of the time that he or she assumes such responsibility with Respondent; and
 2. Secure from each such person a signed and dated statement acknowledging receipt of this Order and the Complaint;
- C. Within ninety (90) days after the date on which this Order becomes final, file with the Commission a verified written report demonstrating how it has complied and is complying with this Order; and
- D. Notify the Commission at least thirty (30) days prior to any proposed change in Respondent, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in Respondent that may affect compliance obligations arising out of this Order.

IV.

IT IS FURTHER ORDERED that Respondent shall notify the Commission of any change in its principal address within twenty (20) days of such change in address.

V.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, calendars, and other records and documents in its possession, or under its control, relating to any matter contained in this Order; and

- B. Upon five (5) days' notice to Respondent and without restraint or interference from it, to interview officers, directors, or employees of Respondent in the presence of counsel.

VI.

IT IS FURTHER ORDERED that this Order shall terminate twenty (20) years from the date of issuance.

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED: