

IN THE MATTER OF  
MEDICAL STAFF OF JOHN C. LINCOLN HOSPITAL &  
HEALTH CENTER

CONSENT ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE  
FEDERAL TRADE COMMISSION ACT

*Docket C-3166. Complaint, Sept. 26, 1985—Decision, Sept. 26, 1985*

This consent order requires an unincorporated association of physicians and other practitioners who have been granted privileges by John C. Lincoln Hospital & Health Center in Phoenix, Ariz. to admit and attend patients, among other things, to cease threatening or participating in any: (1) boycott or concerted refusal to deal, including a refusal to refer, admit or treat patients; (2) unreasonably discriminatory action against a health care facility or professional; or (3) coercive action to influence any reimbursement or insurance determination, if the purpose or effect of such conduct would be to impede the development or operation of an urgent care center or other health care facility or institution in the Arizona counties of Maricopa, Pinal, Yavapai or Gila. Respondent is not prohibited from participating in any policy-making or medical review activities at the hospital, when such conduct does not constitute, and is not part of, a boycott or refusal to deal. Additionally, respondent is required to file compliance reports with the Commission at specified times and provide copies of the complaint and order to all present and future members of the Medical Staff.

*Appearances*

For the Commission: *Raymond L. Randall and Nina B. Hale.*

For the respondents: *Gerald A. Gaffaney, Mariscal, Weeks, McIntyre & Friedlander, Phoenix, Ariz.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended (15 U.S.C. 41 *et seq.* ), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the named respondent has violated the provisions of Section 5 of the Federal Trade Commission Act and that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows:

PARAGRAPH 1. John C. Lincoln Hospital & Health Center (hereinafter "Lincoln Hospital" or "the Hospital") is a nonprofit corporation organized and existing under the laws of the State of Arizona and operating a general acute care hospital. The principal physical facili-

ties of Lincoln Hospital are located at 9211 North Second Street, Phoenix, Arizona.

PAR. 2. Respondent Medical Staff of John C. Lincoln Hospital & Health Center (hereinafter "Medical Staff") is an unincorporated association, organized and existing under the laws of the State of Arizona, and is located at Lincoln Hospital, Phoenix, Arizona. It is composed of the physicians and other practitioners who have been granted privileges to attend patients at Lincoln Hospital.

PAR. 3. Most, if not all, of the members of the Medical Staff are engaged in the business of providing medical services for a fee. Except to the extent that competition has been restrained as herein alleged, most, if not all, of the Medical Staff's members have been and are now in competition among themselves and other health care providers in the Phoenix metropolitan area.

PAR. 4. The Medical Staff's purposes include providing the organizational structure through which the "benefits of membership on the Staff may be obtained by individual practitioners" and providing "a means through which the Medical Staff may participate in the Hospital's policy-making and planning process." By virtue of its purposes and activities, the Medical Staff is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44, and is subject to the Commission's jurisdiction.

PAR. 5. In the course and conduct of their businesses and professions, physicians in the Phoenix metropolitan area charge fees and collect payments that, in substantial part, are paid directly or indirectly with federal funds or funds received interstate from insurance companies, employers, and other payers. The flow of said funds is affected by competition among physicians in the Phoenix metropolitan area and by the acts and practices of the Medical Staff and its members as hereinafter alleged. Said acts and practices are in commerce or affect commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

PAR. 6. In December 1982, the Board of Directors of Lincoln Hospital announced its plan to operate an urgent care center approximately three miles south of the hospital. The urgent care center, which opened on March 21, 1983, was designed to provide treatment to patients with urgent, but not life-threatening, conditions without the need for an appointment.

PAR. 7. Beginning in January 1983, the Medical Staff, acting as a combination of its members or in conspiracy with at least some of its members or others, joined in a common plan to coerce, intimidate, and threaten to boycott Lincoln Hospital in order to induce cancellation of the Hospital's involvement with any urgent care center in competition with members of the Medical Staff.

PAR. 8. The Medical Staff and members of the Medical Staff engaged in the following conduct, among other things, in furtherance of the aforesaid combination or conspiracy:

A. At a special meeting of the Medical Staff's Executive Committee on January 31, 1983, physicians of the Executive Committee and the Medical Staff's Family Practice Department expressed "concern" about the "impossibility" of their continuing to "support" with admissions a hospital engaged in competition with them and adopted a resolution that Lincoln Hospital should not engage in the "corporate practice of medicine" in "competition with private physicians who support the hospital."

B. On February 3, 1983, the Medical Staff Executive Committee, which is empowered to represent and act on behalf of the Medical Staff, voted that the Hospital's plans for the urgent care center were "not acceptable" to the Medical Staff.

C. On March 29, 1983, a member of the Medical Staff transmitted to each member of Lincoln Hospital's board of directors a document, which he claimed reflected the attitude of Medical Staff members, that (1) criticized the planned urgent care center and (2) stated that physicians would "take their patients (and their patient-generated revenues) to a friendlier competing facility."

D. On March 31, 1983, the Medical Staff Executive Committee voted that the Hospital should close the urgent care center.

E. On April 11, 1983, a Medical Staff member wrote to every Lincoln Hospital board member that Lincoln Hospital could "ill afford" any "alienation" of its Medical Staff in light of a new competing hospital being opened nearby, and cited an attached "position paper" adopted by the Maricopa County Medical Society recommending that physicians "not support" facilities that engage in "unfair competition" with them and that physicians should "stand together" as "admitters" of patients to such hospitals.

F. In April 1983, other members of the Medical Staff wrote letters to the members of the Lincoln Hospital board resigning from the Medical Staff or threatening to cease admitting patients to the Hospital because of the Hospital's operation of the urgent care center.

PAR. 9. On April 15, 1983, as a result of the aforesaid combination or conspiracy and conduct, the Hospital announced the closing of its urgent care center.

PAR. 10. The purposes or effects and the tendency and capacity of the combination or conspiracy and acts and practices described in Paragraphs Seven and Eight are and have been to restrain trade unreasonably and hinder competition in the provision of health care

services in the Phoenix metropolitan area, and to deprive consumers of the benefits of competition in the following ways, among others:

A. Patients have been limited in their ability to choose among a variety of alternative types of health care facilities competing on the basis of price, service, and quality;

B. Other hospitals may be deterred from operating similar facilities that might compete with the private practices of physicians on medical staffs;

C. The development of a competitive, convenient, cost-effective and innovative form of health care facility has been hindered;

D. Lincoln Hospital's ability to compete with other hospitals in the Phoenix metropolitan area has been restrained.

PAR. 11. The combination or conspiracy described above constitutes an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. Such combination or conspiracy is continuing and will continue absent the entry against Respondent of appropriate relief.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, 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 the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules the Commission

hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Medical Staff of John C. Lincoln Hospital & Health Center is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arizona, with its office and principal place of business located at 9211 North Second Street, in the city of Phoenix, State of Arizona.

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

#### ORDER

##### I.

*It is ordered*, That for purposes of this order, the following definitions shall apply:

A. *Respondent or the Medical Staff* means the Medical Staff of John C. Lincoln Hospital & Health Center, its officers, committees, representatives, delegates, agents, employees, successors, or assigns. The Medical Staff is an unincorporated association of physicians and other practitioners who have been granted privileges by John C. Lincoln Hospital & Health Center to admit and attend patients in John C. Lincoln Hospital & Health Center.

B. *Lincoln Hospital* means John C. Lincoln Hospital & Health Center, a non-profit corporation organized and existing under and by virtue of the laws of the State of Arizona that operates a general acute care hospital.

C. *Urgent care center* means a freestanding health care delivery facility that is designed and staffed to provide treatment to patients with non-life threatening, but nevertheless urgent, conditions on a non-appointment, episodic basis.

D. *Corrective action* means action taken pursuant to and in conformance with the Medical Staff's bylaws against any person with clinical privileges at Lincoln Hospital who fails to provide evidence of eligibility to purchase malpractice insurance or whose activities or professional conduct are detrimental to patient safety, the delivery of quality patient care, or are unreasonably disruptive to the operation of Lincoln Hospital.

## II.

*It is ordered,* That Respondent shall cease and desist from, directly or indirectly or through any device:

A. Making, or joining in any plan to make, any express or implied threat of any unreasonably discriminatory action against a health care facility, institution, or professional, any coercive action to influence any reimbursement or insurance determination, or any boycott or concerted refusal to deal, including a refusal to refer, admit, or treat patients, or

B. Suggesting, encouraging, initiating, engaging in, or participating in any unreasonably discriminatory action against a health care facility, institution, or professional, any coercive action to influence any reimbursement or insurance determination, or any boycott or concerted refusal to deal, including a refusal to refer, admit, or treat patients,

for the purpose of, or with the effect or likely effect of, impeding the development or operation of an urgent care center or other health care facility or institution in the Arizona counties of Maricopa, Pinal, Yavapai, or Gila.

## III.

*It is further ordered,* That this order shall not be construed to prohibit Respondent or its members from engaging, pursuant to the Medical Staff's bylaws, in credentialing, corrective action, utilization review, quality assurance, peer review, or hospital policy-making activities at Lincoln Hospital, where such conduct neither constitutes nor is part of any boycott, concerted refusal to deal, discrimination, or coercion, the purpose, effect, or likely effect of which is to impede unreasonably the development or operation of an urgent care center or any other health care facility or institution.

## IV.

*It is further ordered,* That this order shall not be construed to prevent Respondent from exercising rights guaranteed against infringement by the First Amendment of the United States Constitution, including the right to petition any federal or state executive, legislative, judicial, or administrative agency or body, concerning legislation, rules, regulations, or procedures, or from engaging in any

activities which are exempt from the antitrust laws under the state action doctrine or the *Noerr-Pennington* Doctrine.

V.

*It is further ordered, That Respondent shall:*

A. Within thirty (30) days after this order becomes final, mail a copy of this order and of the complaint in this proceeding to each officer and to each physician who is a member of the Medical Staff on that date, and, for a period of five (5) years after that date, provide a copy of such order and complaint to each physician who becomes a member of the Medical Staff.

B. Within one hundred and twenty days (120) after this order becomes final, and at such other times as the Commission may by written notice to the Respondent require, file or cause to be filed with the Commission a written report setting forth in detail the manner and form in which it has complied with this order.

C. In addition to the report required by Section V.B., within one year after this order becomes final, and annually for a period of five (5) years on or before the anniversary of the date on which this order becomes final, and at such other times as the Commission may by written notice require, file a written report with the Federal Trade Commission setting forth in detail the manner and form in which the Medical Staff has complied and is complying with this order.

D. For a period of five years after this order becomes final, maintain and make available to the Commission staff for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with any activity covered by Part II of this order

VI.

*It is further ordered, That the Respondent notify the Commission at least thirty (30) days prior to any proposed change in the Medical Staff that may affect compliance obligations arising out of this order.*

