

IN THE MATTER OF

IOWA CHAPTER OF THE AMERICAN
PHYSICAL THERAPY ASSOCIATION

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

Docket C-3242. Complaint, Nov. 4, 1988—Decision, Nov. 4, 1988

This consent order prohibits, among other things, the Iowa Chapter of the American Physical Therapy Association (ICAPTA) from restricting any physical therapist from accepting or continuing employment with any physician, or from declaring such employment illegal or unethical.

Appearances

For the Commission: *Erika R. Wodinsky.*

For the respondent: *Glenn Goodwin, Duncan, Jones, Riley & Finley, Des Moines, Ia.*

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 Iowa Chapter of the American Physical Therapy Association has violated the provisions of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Iowa Chapter of the American Physical Therapy Association ("ICAPTA"), sometimes referred to herein as "respondent," is a corporation formed pursuant to the laws of the State of Iowa. Respondent is a voluntary association of approximately 360 physical therapists, who comprise over 65% of the physical therapists licensed to practice in Iowa. Its principal business office is located at 1454 30th Street, Suite 201, West Des Moines, Iowa.

PAR. 2. Respondent's members are generally engaged in the business of providing physical therapy services to patients for a fee. Except to the extent that competition has been restrained as alleged

herein, respondent's members have been and are now in competition among themselves, with other physical therapists, with physical therapy services owned by physicians, and with other health care providers in the State of Iowa.

PAR. 3. Respondent engages in substantial activities that further its members' pecuniary interests. By virtue of its purposes and activities, respondent is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

PAR. 4. The acts and practices of respondent, including the acts or practices alleged herein, have been in, or are affecting, commerce, within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

PAR. 5. Respondent has acted as a combination of at least some of its members or has conspired with at least some of its members to hinder, frustrate, or restrict competition among physical therapists, and between physical therapists and physician-owned physical therapy services in Iowa, by restricting or attempting to restrict its members and other physical therapists from accepting or continuing employment with physicians or with physical therapy services owned by physicians.

PAR. 6. Respondent has engaged in various acts and practices in furtherance of this combination or conspiracy, including the following:

A. In 1983, ICAPTA adopted a resolution stating that it was illegal and unethical for physical therapists to work under an employment agreement with a physician, and calling upon ICAPTA members to report any physical therapists working under such an arrangement to ICAPTA or the Iowa State Board of Physical and Occupational Therapy Examiners. ICAPTA disseminated this resolution widely among physical therapists in Iowa. Shortly thereafter, ICAPTA learned that employment of a physical therapist by a physician did not violate Iowa state law, but never informed its members that this form of practice was not illegal.

B. In 1985, ICAPTA adopted a resolution that ICAPTA members engaged in direct salary arrangements with physicians be disciplined by the chapter and could be subject to dismissal from ICAPTA. ICAPTA disseminated this resolution widely among physical therapists in Iowa.

C. In 1986, ICAPTA adopted several resolutions that communicated to members the idea that employment by a physician who referred patients to the physical therapist would constitute an unethical

employment arrangement, and would subject the physical therapist to possible disciplinary action. ICAPTA disseminated this resolution widely among physical therapists in Iowa.

PAR. 7. The purposes or effects of the combination or conspiracy and acts or practices of respondents as described above have been and are to restrain competition unreasonably and to injure consumers in one or more of the following ways, among others:

A. Competition among physical therapists, and between physician-owned physical therapy services and other physical therapy services, is impeded;

B. Physical therapists in Iowa are deterred from accepting employment by physicians and offering their services in conjunction with physicians' services;

C. The development of efficient forms of practice that may reduce costs by offering the combination of physician diagnosis, physical therapy treatment, and physician-physical therapist consultation at one location is hindered; and

D. Consumers are deprived of choice of provider and convenience of obtaining physician services and physical therapy services at the same location.

PAR. 8. The combination or conspiracy described above constitutes an unfair method of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, as amended. Such combination or conspiracy, or the effects thereof, is continuing and will continue in the absence of the relief herein requested.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Iowa Chapter of the American Physical Therapy Association ("ICAPTA" or "respondent"), and the respondent having been furnished thereafter with a copy of a draft of complaint which the San Francisco Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent that the law had 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 respondent has 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. ICAPTA is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa, with its principal business address located at 1454 30th Street, Suite 201, West Des Moines, Iowa.

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 for purposes of this order:

A. "*Respondent*" means the Iowa Chapter of the American Physical Therapy Association ("ICAPTA"), and its board of directors, officers, councils, committees, representatives, agents, employees, successors, and assigns.

B. "*Employment or other contractual arrangement*" means an employment or other contractual arrangement, written or unwritten, that is permitted under Iowa and federal law.

C. "*Physical therapist*" means any person licensed as a physical therapist by the State of Iowa.

II.

It is ordered, That respondent shall cease and desist, directly or

through any corporate or other device, from restricting, impeding, regulating, declaring unethical or illegal, interfering with, or advising against any physical therapist:

A. Accepting or continuing any employment or other contractual arrangement with any physician, or other health care provider because such physician or health care provider employs or seeks to employ, or has a contractual arrangement with, or seeks to enter into a contractual arrangement with any physical therapist; or

B. Referring patients to, or accepting referrals from, any physician or other health care provider because that physician or health care provider employs or seeks to employ, or has a contractual arrangement with, a physical therapist.

III.

It is further ordered, That respondent shall cease and desist, directly or through any corporate or other device, from making, directly or by implication, any representation concerning the legality or illegality of any aspect of physical therapy practice unless, at the time of such representation, respondent possesses and relies upon a reasonable basis for such representation.

IV.

It is further ordered, That this order shall not prohibit respondent from, in good faith, petitioning any federal or state government executive agency or legislative body concerning legislation, rules or procedures, or participating in any federal or state administrative or judicial proceeding.

V.

It is further ordered, That respondent shall within sixty (60) days after this order becomes final:

A. Rescind all resolutions, and remove from any existing ICAPTA policy statements or guidelines, any provision, interpretation or policy statement which is inconsistent with the provisions of Part II of this order; and

B. Publish a copy of this order in the *ICAPTA Recap* or any successor publication, and for a period of three (3) years thereafter,

annually publish a copy of the Notice attached hereto in the *ICAPTA Recap* or any successor publication.

VI.

It is further ordered, That respondent shall:

A. Within ninety (90) days after this order becomes final, file a written report with the Federal Trade Commission setting forth in detail the manner and form in which it has complied with this order; and

B. For a period of five (5) 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 by respondent in connection with the activities covered by this order.

VII.

It is further ordered, That the respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent, such as dissolution or reorganization resulting in the emergence of a successor corporation or association, or any other change in the corporation or association which may affect compliance obligation arising out of this order.

NOTICE

The Iowa Chapter of the American Physical Therapy Association ("ICAPTA") has entered into a consent agreement with the Federal Trade Commission. Under the terms of the agreement, ICAPTA is required to inform you that it is not unethical or illegal for a physical therapist to accept or continue employment with a physician or physician-owned physical therapy service.

Among other things, the consent agreement forbids any action by ICAPTA that would restrict physical therapists from:

- accepting or continuing any lawful employment or contractual arrangement with a physician; or
- making referrals to, or accepting referrals from a physician or other health care provider because that provider employs a physical therapist.

It would also prohibit ICAPTA from making representations about the legality or illegality of any aspect of physical therapy practice without having a reasonable basis for such statements.

In entering into this consent agreement, ICAPTA has not admitted any liability, or agreed that any law has been violated.

You may obtain a copy of the consent agreement and of the complaint of the Federal Trade Commission from ICAPTA or from the Federal Trade Commission.

Complaint

111 F.T.C.

IN THE MATTER OF

REMOVATRON INTERNATIONAL CORPORATION, ET AL.

FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 & 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9200. Complaint, Sept. 30, 1985—Final Order, Nov. 4, 1988*

This Final Order prohibits, among other things, the Boston, Mass. sellers of an electronic device called "Removatron", from making unsubstantiated claims about the product and requires clinical testing as substantiation for future permanency claims.

Appearances

For the Commission: *David Keniry* and *David Fitzgerald*.

For the respondents: *David Lipton* and *David H. Erickson*, *Lipton & Pemstein*, Boston, Ma. *Judith Ashton*, *Davis, Malm & D'Agostine*, Boston, Ma.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Removatron International Corporation, a corporation, and Frederick E. Goodman, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Removatron International Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 215 A Street, Boston, MA.

Frederick E. Goodman is an individual and an officer of Removatron International Corporation. He formulates, directs and controls the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of said corporation.

PAR. 2. Respondents are now and have been engaged in the advertising, offering for sale, and sale of a high frequency tweezer-type epilator (hair removal device employing radio frequency energy) called Removatron to beauty salon owners and others who in turn advertise and sell Removatron treatments to consumers. The Removatron epilator is a "device" within the meaning of Section 12 of the Federal Trade Commission Act.

PAR. 3. Respondents maintain, and have maintained a substantial course of trade in or affecting commerce, including the acts and practices hereafter set forth, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, respondents disseminated and caused the dissemination of advertisements or promotional materials concerning the Removatron device through the United States mails by various means in or affecting commerce for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of the Removatron device or Removatron treatments. The advertisements or promotional materials were and are disseminated to potential buyers of the Removatron device and through such buyers to the ultimate consumers of Removatron treatments.

PAR. 5. Through the use of the advertisements and promotional materials referred to in paragraph four, respondents have made, and in some instances are still making, the following statements concerning the Removatron device, method or treatments:

1. "Permanent hair removal."
2. "Removatron. It lets you say good-bye to temporary solutions like messy creams."
3. "The method is fully ... effective ... All hairs can be treated successfully ... Removatron ... is more effective than any electrolysis machine on the market."
4. "Unwanted hair is no longer a Problem, with a series of treatments, it can be Removatroned forever!"
5. "[T]he Removatron method uses modern electronic tweezers to EFFECTIVELY remove unwanted hair ... " (Emphasis in original.)
6. "alternative to electrolysis"

PAR. 6. through the use of these and other statements in the advertisements and promotional materials referred to in paragraphs four and five, and others not specifically set forth herein, respondents have represented, and in some instances are still representing, directly or by implication, that:

