

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

In the Matter of

OBSTETRICS AND GYNECOLOGY MEDICAL
CORPORATION OF NAPA VALLEY,
a corporation,

BRYAN HENRY, M.D.,
R. BRUCE SCARBOROUGH, M.D.,
ANTHONY KING, M.D.,
individually, and as officers of said corporation,

DARIO GAMBETTA, M.D.,
JEROME SOLOMON, M.D., and
CHERYL HENRY, M.D.,
individually.

DOCKET NO.

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 (“Commission”), having reason to believe that Obstetrics and Gynecology Medical Corporation of Napa Valley, a California corporation (“OGMC”), Bryan Henry, M.D., R. Bruce Scarborough, M.D., Anthony King, M.D., Dario Gambetta, M.D., Jerome Solomon, M.D., and Cheryl Henry, M.D. (collectively the “physician respondents”) have violated the provisions of said Act, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

RESPONDENTS

PARAGRAPH 1: OGMC 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 1100 Trancas Street, Suite #209, Napa, CA, 94558.

PARAGRAPH 2: The physician respondents are individuals who are or have been engaged in the

private practice of obstetrics and gynecology for a fee in Napa County, CA. Except to the extent that competition has been restrained as alleged herein, some or all of the physician respondents have been, and are now, in competition with each other for the provision of physician services. The physician respondents are, or were, the shareholders of OGMC. Their respective business addresses are as follows:

- a. Bryan Henry, M.D., 1530 Railroad Avenue, St. Helena, CA 94574;
- b. R. Bruce Scarborough, M.D., 1100 Trancas Street, #209, Napa, CA 94558;
- c. Anthony King, M.D., 980 Trancas Street, #11, Napa, CA 94558;
- d. Dario Gambetta, M.D., 1530 Railroad Avenue, St. Helena, CA 94574;
- e. Jerome Solomon, M.D., 1100 Trancas Street, #351, Napa, CA 94558;
- f. Cheryl Henry, M.D., 975 Sereno Dr., Vallejo, CA 94589.

PARAGRAPH 3: The physician respondents are, or have been, members of the medical staffs of the two general acute care hospitals in Napa County, CA. They constitute virtually all of the obstetricians and gynecologists with active medical staff privileges at both hospitals.

JURISDICTION

PARAGRAPH 4: The general business practices of OGMC and the physician respondents, including the acts and practices alleged herein, are in commerce or affect commerce as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

PARAGRAPH 5: Respondent OGMC is a for-profit corporation that also engages in substantial activities for the pecuniary benefit of its physician members. At all times relevant to the complaint, OGMC is and has been organized in substantial part for the profit of its members, and therefore is a corporation within the meaning of Section 4 of the FTC Act, 15 U.S.C. § 44.

BUSINESS ACTIVITIES

PARAGRAPH 6: Physicians often contract with health plans that reimburse, purchase, or pay for health care services provided to other persons. Such health plans include, but are not limited to, health maintenance organizations (“HMOs”) and preferred provider organizations. Contracts between physicians and health plans typically establish the terms and conditions, including price terms, under which the physicians will render services to the enrollees of the health plans. Physicians entering into such contracts often agree to reductions in their compensation to obtain access to additional patients. These contracts may permit health plans to lower their costs and thus reduce the cost of medical care

for their enrollees.

PARAGRAPH 7: Physicians organize their practices under several models, including, but not limited to, sole proprietorships, partnerships, and professional corporations (collectively “physician entities”). Absent agreements among competing physician entities on the terms on which they will provide services to the enrollees of health plans, competing physician entities decide unilaterally whether to enter into contracts with health plans to provide services to the health plan enrollees and what prices and other terms and conditions they will accept under such contracts.

PARAGRAPH 8: Physician entities often are paid for the services they provide to health plan enrollees either by contracting directly with a health plan or by participating in independent practice associations (“IPAs”). Some physician entities that participate in IPAs share the risk of financial loss with other participants if the total costs of services provided to health plan enrollees exceed the anticipated volume of service. In addition, when the physician entities share financial risk, they typically agree to follow guidelines relating to quality assurance, utilization review, and administrative efficiency.

PARAGRAPH 9: Napa Valley Physicians’ Plan, A Medical Group Inc. (“Napa Valley Physicians”) was a risk-sharing IPA, as described in Paragraph 8. Among other things, Napa Valley Physicians contracted with HMOs to provide services to HMO enrollees, most of whom lived or worked in Napa County, CA. Many physicians in Napa County participated in, or had contracts with, Napa Valley Physicians to provide services to the HMO enrollees under Napa Valley Physicians’ contracts with HMOs. The physician respondents shared risk under their agreements with Napa Valley Physicians and provided services to HMO enrollees under contracts negotiated by Napa Valley Physicians with health plans.

PARAGRAPH 10: Beginning in 1998, the physician respondents became dissatisfied with their level and timeliness of reimbursement from Napa Valley Physicians and expressed that dissatisfaction to Napa Valley Physicians. In early 1999, each physician respondent concurrently terminated his or her relationship with Napa Valley Physicians. After their terminations, the physician respondents continued to provide services to HMO enrollees through Napa Valley Physicians on a fee-for-service basis. Once the physician respondents began providing services on a fee-for-service basis, they no longer shared financial risk. Although the physician respondents consulted legal counsel in late 1999 about forming an entity in which the physician respondents would share financial risk regarding agreements with Napa Valley Physicians, no such agreement was executed.

PARAGRAPH 11: In February 2000, the physician respondents formed OGMC to, among other things, promote the collective economic interests of the physician respondents by increasing their negotiating power with Napa Valley Physicians. The physician respondents knew that health plans needed to have the services of the physician respondents, whether through Napa Valley Physicians, through another IPA, or through direct contract, in order to be able to offer a viable health plan in Napa County.

ACTS AND PRACTICES

PARAGRAPH 12: Prior to the formation of OGMC, and continuing into 2001, the physician respondents agreed with some or all of the other physician respondents to refuse to contract individually with Napa Valley Physicians or any health plan.

PARAGRAPH 13: Prior to the formation of OGMC, and continuing into 2001, while attempting to negotiate a contract with Napa Valley Physicians under which the physician respondents would share financial risk, the physician respondents agreed on the fees they would charge to Napa Valley Physicians or health plans for obstetrical and gynecological services provided under agreements between Napa Valley Physicians and health plans. After the formation of OGMC, the physician respondents agreed on the fees they would charge, as members of OGMC, to Napa Valley Physicians and/or health plans for obstetrical and gynecological services provided under agreements between OGMC and Napa Valley Physicians and between OGMC and health plans. On numerous occasions, the physician respondents met to discuss collectively and to vote on short-term and long-term fee-for-service and risk contract proposals. In many instances, the physician respondents agreed on such contract proposals, which included fee-for-service price terms.

PARAGRAPH 14: Prior to the formation of OGMC, and continuing into 2001, the physician respondents agreed to boycott and did boycott Napa Valley Physicians in order to coerce Napa Valley Physicians to meet the physician respondents' demands for higher fees for services rendered to enrollees of HMOs that contracted with Napa Valley Physicians.

PARAGRAPH 15: Respondent OGMC, acting as a combination of its members, and in conspiracy with its members, has acted to restrain competition by, among other things, facilitating, entering into, and implementing agreements among its members, express or implied, to fix price and other competitively significant terms of dealing with Napa Valley Physicians and/or health plans, and refusing to deal with Napa Valley Physicians and/or health plans except on collectively agreed-upon terms.

PARAGRAPH 16: The physician respondents, acting as a combination, and in conspiracy with one another, have acted to restrain competition by, among other things, facilitating, entering into, and implementing agreements among themselves, express or implied, to fix price and other competitively significant terms of dealing with health plans, and to refuse to deal with Napa Valley Physicians and/or health plans except on collectively agreed-upon terms.

PARAGRAPH 17: The physician respondents have not clinically or financially integrated their practices to create efficiencies sufficient to justify the acts and practices described in Paragraphs 12 through 16.

EFFECTS OF RESPONDENTS' ACTS AND PRACTICES

PARAGRAPH 18: As a consequence of the respondents' conduct, described in Paragraphs 12 through 16, Napa Valley Physicians did not have sufficient providers of obstetrical and gynecological

services to serve adequately the HMO enrollees of the health plans with which it had contracted. Because Napa Valley Physicians was unable to ensure adequate obstetrical and gynecological services to HMO enrollees, certain health plans discontinued providing HMO coverage in Napa County. Consequently, HMO enrollees had to find alternative health plan coverage.

PARAGRAPH 19: The conduct described in Paragraphs 12 through 16 has had, or has the tendency to have, the effect of restraining trade unreasonably and hindering competition in the provision of physician services in Napa County in the following ways, among others:

- A. Price and other forms of competition among the physician respondents has been unreasonably restrained;
- B. Prices for physician services have increased;
- C. Health plans, employers, and consumers have been deprived of the benefits of competition in the purchase of physician services; and
- D. Employers and individual consumers were deprived of the benefits of competition among health plans.

VIOLATION OF THE FTC ACT

PARAGRAPH 20: The combination, conspiracy, acts, and practices described above constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such acts and practices, or the effects thereof, will continue or recur in the absence of appropriate relief.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this _____ day of _____, 2002, issues its complaint against OGMC and the physician respondents.

By the Commission.

Donald S. Clark
Secretary

SEAL:

ISSUED: