

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

**COMMISSIONERS:       Jon Leibowitz, Chairman  
                              J. Thomas Rosch  
                              Edith Ramirez  
                              Julie Brill  
                              Maureen K. Ohlhausen**

<b>In the Matter of</b>	)	
	)	
<b>Cooperativa de Farmacias Puertorriqueñas</b>	)	<b>Docket No. C-4374</b>
<b>(Coopharma),</b>	)	
<b>      a corporation.</b>	)	
	)	
	)	

**DECISION AND ORDER**

The Federal Trade Commission (“Commission”), having initiated an investigation of the Cooperativa de Farmacias Puertorriqueñas (“Coopharma”), hereinafter referred to as “Respondent,” and Respondent having been furnished thereafter with a copy of the draft Complaint that counsel for the Commission 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 attorneys, 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 Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by any 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 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, and having duly considered the comment filed thereafter by an interested person pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure described in Commission Rule 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues the following Order:

1. The Cooperativa de Farmacias Puertorriqueñas is a not-for-profit corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Puerto Rico with its principal address at 2 Calle Colon, Aguada, Puerto Rico 00602.
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 the Cooperativa de Farmacias Puertorriqueñas (“Coopharma”); its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and subsidiaries, divisions (including, but not limited to, the PSAO Department), groups, and affiliates controlled by it; and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- B. “Distribute” means to provide a copy of the specified documents by (1) personal delivery, with a signed receipt of confirmation; (2) first-class mail with delivery confirmation or return receipt requested; (3) facsimile with return confirmation; or (4) electronic mail with electronic return confirmation.
- C. “Participate” in an entity or an arrangement means (1) to be a partner, shareholder, owner, member, or employee of such entity or arrangement, or (2) to provide services, agree to provide services, or offer to provide services to a Payer through such entity or arrangement. This definition applies to all tenses and forms of the word “Participate,” including, but not limited to, “Participating,” “Participated,” and “Participation.”
- D. “Payer” means any person that pays or arranges for payment, for all or any part of any Pharmacy services to itself or any other Person, as well as any Person that develops, leases, or sells access to networks of Pharmacies.
- E. “Person” means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.
- F. “Pharmacy” means any Person licensed by the Commonwealth of Puerto Rico to dispense pharmaceuticals.
- G. “Preexisting Contract” means a contract for the provision of Pharmacy services that was in effect on the date of the receipt by a Payer that is a party to such contract of notice sent by Respondent pursuant to Paragraph III.A.2 of this Order of such Payer’s right to terminate such contract.

## II.

**IT IS FURTHER ORDERED** that Respondent, directly or indirectly, or through any corporate or other device, in connection with the provision of Pharmacy 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 Pharmacies with respect to the provision of Pharmacy services:
  - 1. To negotiate on behalf of any Pharmacy with any Payer;
  - 2. To refuse to deal or threaten to refuse to deal with any Payer, in furtherance of any conduct or agreement that is prohibited by any other provision of Paragraph II of this Order;
  - 3. Regarding any term, condition, or requirement upon which any Pharmacy deals, or is willing to deal, with any Payer, including, but not limited to, price terms; or
  - 4. Not to deal individually with any Payer, or not to deal with any Payer other than through Respondent;
- B. Exchanging or facilitating in any manner the exchange or transfer of information among Pharmacies concerning any Pharmacy’s willingness to deal with a Payer, or the terms or conditions, including price terms, on which the Pharmacy is willing to deal with a Payer;
- C. Attempting to engage in any action prohibited by Paragraphs II.A through II.B above; and
- D. Encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any Person to engage in any action that would be prohibited by Paragraphs II.A through II.C above.

## III.

**IT IS FURTHER ORDERED** that Respondent shall:

- A. Within thirty (30) days from the date this Order becomes final:
  - 1. Distribute this Order and the Complaint to each current officer, director, member, or employee of Respondent; and
  - 2. Send by first-class mail, with return receipt requested, with the letter attached as the Appendix, to the chief executive officer of each Payer with which Respondent has contracted at any time since January 1, 2008.
- B. Terminate, without penalty or charge, and in compliance with any applicable laws, any Preexisting Contract with any Payer, at the earlier of: (1) receipt by Respondent of a written request from a Payer to terminate such contract, or (2) the earliest termination or renewal date (including any automatic renewal date) of such contract.

**PROVIDED, HOWEVER,** a Preexisting Contract may extend beyond any such termination or renewal date no later than one (1) year from the date that the Order becomes final if, prior to such termination or renewal date:

- (1) the Payer submits to Respondent a written request to extend such contract to a specific date no later than one (1) year from the date that this Order becomes final, and
- (2) Respondent has determined not to exercise any right to terminate.

**PROVIDED FURTHER** that any Payer making such request to extend a contract retains the right, pursuant to Paragraph III.B of this Order, to terminate the Preexisting Contract at any time.

- C. Within ten (10) days of receiving notification from a Payer to terminate, pursuant to Paragraph III.B of the Order, notify in writing, by first class mail with return receipt requested, each Pharmacy that provides services through that contract to be terminated.
- D. For three (3) years from the date this Order becomes final:
  1. Distribute this Order and the Complaint to each Person who becomes an officer, director, member, or employee of Respondent, and who did not previously receive a copy of this Order and the Complaint, within thirty (30) days of the time that he or she becomes an officer, director, member, or employee;
  2. send by first class mail, return receipt requested, a copy of this Order and the Complaint to each Payer who contracts with Respondent for the provision of Pharmacy services and who did not previously receive a copy of this Order and the Complaint, within thirty (30) days of the time that such Payer enters into such contract; and
  3. post and maintain on Respondent's website and annually publish in an official annual report or newsletter sent to all Pharmacy members of Respondent, this Order and the Complaint with such prominence as is given to regularly featured articles.

#### **IV.**

**IT IS FURTHER ORDERED** that Respondent shall:

- A. File a verified written report within sixty (60) days from the date this Order becomes final, annually thereafter for three (3) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may by written notice require. Each report shall include:
  1. a detailed description of the manner and form in which Respondent has complied and is complying with this Order;
  2. the name, address, and telephone number of each Payer with which each Respondent has had any contact during the one (1) year period preceding the date for filing such report; and
  3. the status of each contract required to be terminated;

- B. In addition to the information required by Paragraph IV.A, the sixty day report shall include:
  - 1. the identity of each Payer sent a copy of the letter in the Appendix to the Order and the response of each Payer to that letter;
  - 2. a copy of each verification of Distribution required by Paragraph III.A.1; and
  - 3. a copy of each return receipt required by Paragraph III.A.2 and Paragraph III.C
- C. In addition to the information required by Paragraph IV.A, each annual report shall include:
  - 1. a copy of each verification of Distribution required by Paragraph III.D.1;
  - 2. a copy of each return receipt required by Paragraph III.C that Respondent received subsequent to filing its 60 day report.
  - 3. a copy of each return receipt required by Paragraph III.D.2; and
  - 4. evidence that the copy of the Order and Complaint has been published, as required by Paragraph III.D.3.

**V.**

**IT IS FURTHER ORDERED** that Respondent shall notify the Commission:

- A. Of any change in its primary business address within twenty (20) days of such change in address; and
- B. At least thirty (30) days prior to any proposed: (1) dissolution of Respondent; (2) acquisition, merger, or consolidation of Respondent; or (3) any other change in Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

**VI.**

**IT IS FURTHER ORDERED** that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondent, that Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondent, and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession, or under the control, of Respondent relating to compliance with this Order, which copying services shall be provided by Respondent at its expense;
- B. To interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

**VII.**

**IT IS FURTHER ORDERED** that this Order shall terminate on November 6, 2032.

By the Commission.

Donald S. Clark  
Secretary

SEAL  
ISSUED: November 6, 2012

## APPENDIX

[letterhead of Coopharma]

[name of Payer's CEO]

[address]

Dear \_\_\_\_\_:

Enclosed is a copy of a complaint and a consent order ("Order" ) issued by the Federal Trade Commission against Cooperativa de Farmacias Puertorriqueñas ("Coopharma").

Pursuant to Paragraph III.B of the Order, Coopharma must allow you to terminate, upon your written request, without any penalty or charge, any contracts with Coopharma that are in effect as of the date you receive this letter.

If you do not make a written request to terminate the contract, Paragraph III.B. further provides that the contract will terminate on the earlier of the contract's termination date, renewal date (including any automatic renewal date), or anniversary date, which is [date].

You may, however, ask Coopharma to extend the contract beyond [date], the termination, renewal, or anniversary date, to any date no later than [date], one (1) year after the date the Order becomes final.

If you choose to extend the term of the contract, you may later terminate the contract at any time.

Any request either to terminate or to extend the contract should be made in writing, and sent to me at the following address: [address].

Sincerely,

[Coopharma to fill in information in brackets]