

support any performance, benefits, efficacy, or safety claims they make for any weight loss or weight control product or program or any acupressure device they market in the future.

DATES: Complaint and Order issued April 7, 1995.¹

FOR FURTHER INFORMATION CONTACT: Richard Cleland, FTC/S-4002, Washington, DC. 20580. (202) 326-3088.

SUPPLEMENTARY INFORMATION: On Tuesday, January 31, 1995, there was published in the **Federal Register**, 60 FR 5932, a proposed consent agreement with analysis in the Matter of Ninzu, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,
Secretary.

[FR Doc. 95-11550 Filed 5-10-95; 8:45 am]

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[File No. 931-0083]

**Physicians Group, Inc., et al.;
Proposed Consent Agreement With
Analysis To Aid Public Comment**

AGENCY: Federal Trade Commission.
ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the respondent, a Danville physicians' group, and its seven board members from attempting to engage in an agreement or agreeing with other physicians to negotiate or refuse to negotiate with a third party payor. In addition, it would require dissolution of the respondent within 120 days.

DATES: Comments must be received on or before July 10, 1995.

¹ Copies of the Complaint and Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC. 20580.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Mark Horoschak or Rendell Davis, FTC/S-3115, Washington, DC 20580. (202) 326-2756 or (202) 326-2894.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34, notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Before Federal Trade Commission

In the matter of Physicians Group, Inc., a corporation, Edwin J. Harvie, Jr., M.D., Eric N. Davidson, M.D., Milton Greenberg, M.D., Noah F. Gibson, IV, M.D., William W. Henderson, IV, M.D., Douglas W. Shiflett, M.D., and Lawrence G. Fehrenbaker, M.D., individually. File No. 931 0083.

**Agreement Containing Consent Order
To Cease and Desist**

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, hereinafter sometimes referred to as proposed respondents, and it now appearing that the proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between the proposed respondents and counsel for respondent Physicians Group, Inc., and counsel for the Federal Trade Commission that:

1. Proposed Respondent Physicians Group, Inc. is a nonstock corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal place of business in Danville, Virginia. For purposes of this agreement and order, its address is Physicians Group, Inc., c/o Dr. Edwin J. Harvie, Jr., 101 Holbrook Street, Danville, Virginia 24541.

2. The individual respondents named in the caption above are the members of the board of directors of proposed respondent Physicians Group, Inc., are

physicians licensed to practice medicine in the Commonwealth of Virginia, and are engaged in the business of providing physician services to patients for a fee in Pittsylvania County and Danville, Virginia. Their respective business addresses are as follows:

Edwin J. Harvie, Jr., M.D., Internal Medicine Associates, Ltd., 101 Holbrook Street, Danville, Virginia 24541;

Eric N. Davidson, M.D., Piedmont Internal Medicine, Inc., 125 Executive Drive, Suite H, Danville, Virginia 24541;

Milton Greenberg, M.D., 171 South Main Street, Danville, Virginia 24541;

Noah F. Gibson, IV, M.D., 181 North Main Street, Danville, Virginia 24541;

William W. Henderson, IV, M.D., Danville Pulmonary Clinic, Inc., 110 Exchange Street, Suite G, Danville, Virginia 24541;

Douglas W. Shiflett, M.D., Internal Medicine Associates, Ltd., 101 Holbrook Street, Danville, Virginia 24541; and

Lawrence G. Fehrenbaker, M.D., Danville Urologic Clinic, P.O. Box 1360, Danville, Virginia 24543.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint.

4. Proposed respondents waive:
(a) Any further procedural steps;
(b) The requirement that the

Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information with respect thereto will be publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute

an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other order. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondents have read the proposed complaint and order contemplated hereby. Proposed respondents understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

Order

I

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

A. "PGI" means Physicians Group, Inc., its subsidiaries, divisions, committees, and groups and affiliates controlled by PGI; their directors, officers, representatives, agents, and employees; and their successors and assigns.

B. "Physician respondents" means Edwin J. Harvie, Jr., M.D., Eric N.

Davidson, M.D., Milton Greenberg, M.D., Noah F. Gibson, IV, M.D., William W. Henderson, IV, M.D., Douglas W. Shiftlett, M.D., and Lawrence G. Fehrenbaker, M.D.

C. "Person" refers to both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.

D. "Payor" means any person that purchases, reimburses for, or otherwise pays for all or part of the health care services for itself or for any other person—including, but not limited to, health insurance companies; preferred provider organizations; prepaid hospital, medical, or other health service plans; health maintenance organizations; government health benefits programs; employers or other persons providing or administering self-insured health benefits programs; and patients who purchase health care for themselves.

E. "Reimbursement" means any and all cash or non-cash compensation or other benefits received for the rendering of physician services.

F. "Cost containment" means methods used by payors to lower health care costs, including, but not limited to, procedures under which payors review utilization by participating physicians to determine whether a physician service is covered by insurance and whether such service is appropriate, and procedures under which payors deal with physicians who provide services that are determined not to be appropriate.

G. "Integrated joint venture" means a joint arrangement to provide health care services in which all physicians participating in the venture who would otherwise be competitors (1) pool their capital to finance the venture, by themselves or together with others, and (2) share a substantial risk of loss from their participation in the venture.

H. "Professional business entity" means professional corporation, professional partnership, and professional limited liability company.

II

It is further ordered that PGI and each physician respondent, directly or indirectly, or through any corporate or other device, in connection with the provision of physician services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith shall cease and desist from:

A. Entering into, attempting to enter into, organizing, attempting to organize, implementing, attempting to implement, continuing, attempting to continue,

facilitating, attempting to facilitate, ratifying, or attempting to ratify any combination, conspiracy, agreement, or understanding, with or among any physician(s) to:

1. Negotiate, deal, or refuse to deal with a payor, or
2. Determine any terms, conditions, or requirements upon which physicians deal with a payor, including, but not limited to, terms of reimbursement or of cost containment; and

B. Encouraging, advising, pressuring, inducing, or attempting to induce any physician to:

1. Refuse to deal with a payor, or
2. Deal with a payor on terms collectively determined by physicians, including such terms as terms of reimbursement or terms of cost containment.

Provided that, nothing in this order shall prevent physicians who practice together as partners or employees in the same professional business entity from collectively determining the fees to be charged for services rendered by that professional business entity or from collectively determining other terms on which that professional business entity deals with payors.

Further provided that, nothing in this order shall prevent physicians who participate in the same integrated joint venture from collectively determining the fees to be charged for services rendered by that integrated joint venture or from collectively determining other terms on which that integrated joint venture deals with payors.

Further provided that, nothing in this order shall prevent the exercise of rights permitted under the First Amendment to the United States Constitution to petition any federal or state government executive agency or legislative body concerning legislation, rules, or procedures, or to participate in any federal or state administrative or judicial proceeding.

Further provided that, nothing in this order shall prevent physicians from participating at the request of a payor in utilization review activities organized and controlled by the payor insofar as such participation continues only at the sufferance of the payor.

III

It is further ordered that PGI shall:
A. Within ten (10) days after the date on which this order becomes final, cease and desist all business and all other activities of any nature whatsoever, except those activities that are required in order to comply with the terms of this order or that are necessary to effect a winding up of PGI's affairs and its dissolution;

B. Within sixty (60) days after the date on which this order becomes final, and prior to the dissolution provided for in Paragraph III.C. below, distribute by first-class mail a copy of this order and the accompanying complaint to each past and present member of PGI and to each payor who, at any time since February 18, 1986, has communicated any desire, willingness, or interest in contracting for physician services with PGI or with any of the physician respondents; and

C. Dissolve itself within one hundred twenty (120) days after the date on which this order becomes final.

IV

It is further ordered that each physician respondent shall:

A. Within thirty (30) days after the date this order becomes final, prepare a list of the names, addresses, and telephone numbers of all payors who, at any time since February 18, 1986, have communicated any desire, willingness, or interest in contracting with him for physician services, and deliver a copy of that list to PGI; and

B. Take all action necessary to effect dissolution of PGI as required by this order.

V

It is further ordered that PGI shall:

A. Within ninety (90) days after the date on which this order becomes final, and prior to the dissolution provided for in Paragraph III.C. above, file with the Commission a verified written report demonstrating how it has complied and is complying with this order; and

B. Notify the Commission at least thirty (30) days prior to any proposed change in PGI, such as change of address, assignment, sale resulting in the emergence of a successor, or any other change in PGI that may affect compliance obligations arising out of this order.

VI

It is further ordered that each physician respondent shall:

A. Within sixty (60) days after the date this order becomes final, every sixty (60) days thereafter in which PGI is not dissolved, and within the thirty (30) days following dissolution of PGI, file with the Commission a verified written report setting forth in detail the manner and form in which he intends to comply, is complying, and has complied with this order, including, but not limited to, a full description of his efforts to comply with Paragraph IV.B. above;

B. Beginning on January 15, 1996, and continuing annually for three (3) years,

on each succeeding January 15, through and including January 15, 1999, and at such other times as the Commission or its staff may by written notice require, file with the Commission a verified written report setting forth in detail the manner and form in which he has complied with the order; and

C. For ten (10) years, notify the Commission at least thirty (30) days prior to any proposed change in his address or in his medical practice, such as dissolution, assignment, sale resulting in the emergence of a successor, or any other change in his medical practice that may affect compliance obligations arising out of this order.

VII

It is further ordered that, for the purpose of determining or securing compliance with this order and subject to any recognizable privilege, PGI and each physician 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 the possession or under the control of PGI or a physician respondent relating to any matters contained in this order;

B. Upon five business days' notice to PGI and without restraint or interference from it, to interview the officers, directors, or employees of PGI; and

C. Upon five business days' notice to a physician respondent and without restraint or interference from him, to interview the physician respondent or the employees of the physician respondent.

VIII

It is further ordered that this order shall terminate twenty (20) years from the date of issuance.

Physicians Group, Inc., Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, the agreement to a proposed consent order from Physicians Group, Inc. ("PGI") and from the seven members of the board of directors of PGI ("PGI Directors"). The agreement settles charges by the Federal Trade Commission that PGI and the PGI Directors restrained competition among physicians practicing in the area of Danville, Virginia, by, among other things, combining or conspiring to fix the terms under which they would deal with third-party payors, including (1) terms of reimbursement and (2) the

terms by which third-party payors attempt to contain health care costs.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The purpose of this analysis is to facilitate public comment on the agreement. The analysis is not intended to constitute an official interpretation of either the proposed complaint or the proposed consent order or to modify their terms in any way.

The Complaint

Under the terms of the agreement, a proposed complaint would be issued by the Commission along with the proposed consent order. The proposed complaint alleges that PGI is a nonstock corporation with its principal place of business in Danville, Virginia, and that all the members of respondent PGI, including the PGI Directors, are physicians practicing in Pittsylvania County and Danville, Virginia.

The proposed complaint further alleges that, beginning in 1986, PGI and the PGI Directors conspired with each other and with other PGI members to (1) prevent or delay the entry into Pittsylvania County and Danville, Virginia, of third-party payors, (2) deal concertedly with third-party payors, and (3) resist the cost containment measures of third-party payors. In 1988 and 1989, PGI Directors conspired to fix the rate of reimbursement they were willing to accept from the Virginia Health Network, a managed care organization. As a result, the Virginia Health Network was not able to establish a network of health care providers in Pittsylvania County and Danville, Virginia. In 1992 and 1993, PGI and the PGI Directors conspired to fix the terms and conditions of cost containment they were willing to accept from the Key Advantage Plan, a managed care insurance plan for employees of the Commonwealth of Virginia. As a result, the Commonwealth of Virginia was not able until 1994 to fully implement the Key Advantage Plan in Pittsylvania County and Danville, Virginia. In addition, PGI and the PGI Directors conspired to refuse to deal with, and to fix the terms and conditions of dealing with, other third-party payors attempting to do business in Pittsylvania County and Danville, Virginia.

The proposed complaint alleges that this conduct had the following purpose, tendency, and capacity to result in the following effects:

- A. Restraining competition among physicians in Pittsylvania County and Danville, Virginia;
- B. Depriving consumers in Pittsylvania County and Danville, Virginia, of the benefits of competition among physicians;
- C. Fixing or increasing the prices that are paid for physician services in Pittsylvania County and Danville, Virginia;
- D. Fixing the terms and conditions upon which physicians in Pittsylvania County and Danville, Virginia, would deal with third-party payors, including, but not limited to, terms and conditions of cost containment, and thereby raising the price to consumers of insurance coverage issued by third-party payors; and
- E. Depriving consumers in Pittsylvania County and Danville, Virginia, of the benefits of managed care.

Finally, the proposed complaint alleges that the above actions of PGI and the PGI Directors constitute unfair methods of competition, in violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

The Proposed Consent Order

The proposed consent order would prohibit PGI and the PGI Directors from engaging in, or attempting to engage in, any combination, conspiracy, agreement, or understanding, with or among any physician(s) to negotiate, deal, or refuse to deal with a payor, or to determine any terms, conditions, or requirements upon which physicians deal with a payor, including, but not limited to, terms of reimbursement or of cost containment.

The proposed consent order would also prohibit PGI and the PGI Directors from encouraging, advising, pressuring, inducing, or attempting to induce any physician to (1) refuse to deal with a payor, or (2) deal with a payor on terms collectively determined by physicians, including such terms as terms of reimbursement or terms of cost containment.

The proposed consent order specifically permits the following:

1. Physicians who practice together as partners or employees in the same professional business entity collectively determining the fees to be charged for services rendered by that professional business entity, or collectively determining other terms on which that professional business entity deals with payors. (For purposes of this consent

order, "professional business entity" means professional corporation, professional partnership, and professional limited liability company.)

2. Physicians who participate in the same integrated joint venture collectively determining the fees to be charged for services rendered by that integrated joint venture or collectively determining other terms on which that integrated joint venture deals with payors. (For purposes of the proposed consent order, "integrated joint venture" means a joint arrangement to provide health care services in which all physicians participating in the venture who would otherwise be competitors (1) pool their capital to finance the venture, by themselves or together with others, and (2) share a substantial risk of loss from their participation in the venture.)

3. The exercise of rights permitted under the First Amendment to the United States Constitution to petition any federal or state government executive agency or legislative body concerning legislation, rules, or procedures, or to participate in any federal or state administrative or judicial proceeding.

4. Physicians participating at the request of a payor in utilization review activities organized and controlled by the payor insofar as such participation continues only at the sufferance of the payor.

The proposed consent order would require PGI to dissolve itself within 120 days after the date on which the proposed order becomes final. PGI Directors are to take all actions necessary to effect dissolution of PGI as required by the proposed consent order.

The proposed consent order would also require PGI to distribute copies of the proposed complaint and proposed order to past and present members of PGI and each payor who, at any time since February 18, 1986, has communicated any desire, willingness, or interest in contracting for physician services with PGI or with any of the PGI Directors. Each of the PGI Directors is to deliver to PGI a list of payors from whom he has received such a communication.

The order would require PGI and the PGI Directors to (1) file compliance reports with the Commission, (2) notify the Commission of certain proposed changes in PGI or the PGI Directors that may affect their compliance with the order, and (3) permit representatives of the Commission to have access to documents in the possession or under the control of PGI or the PGI Directors relating to any matters contained in the order and to interview the officers,

directors, or employees of PGI and the employees of the PGI Directors.

The proposed consent order would terminate 20 years after the date it is issued.

PGI and the PGI Directors agreed to the proposed consent order for settlement purposes only, and their agreement to the order does not constitute an admission by them that the law has been violated as alleged in the proposed complaint.

Donald S. Clark,

Secretary.

[FR Doc. 95-11553 Filed 5-10-95; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. 6699]

Pittsburgh Plate Glass Co., Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Set aside order.

SUMMARY: This order reopens a 1957 consent order—which prohibited the respondent from discriminating in price between competing purchasers by charging auto manufacturers less for automotive safety glass than it charged glass distributors and glass dealers—and sets aside the consent order pursuant to the Commission's Sunset Policy Statement, under which the Commission presumes that the public interest requires terminating competition orders that are more than 20 years old.

DATES: Consent order issued April 19, 1957. Set aside order issued April 4, 1995.

FOR FURTHER INFORMATION CONTACT: Daniel Ducore, FTC/S-2115, Washington, DC 20580. (202) 326-2526.

SUPPLEMENTARY INFORMATION: In the Matter of Pittsburgh Plate Glass Company. The prohibited trade practices and/or corrective actions are removed as indicated.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 2, 49 Stat. 1526; 15 U.S.C. 13)

In the matter of Pittsburgh Plate Glass Company, a corporation. Docket No. 6699.

Order Reopening Proceeding and Setting Aside Order

On December 9, 1994, PPG Industries, Inc., the successor to Pittsburgh Plate Glass Company, ("PPG"), filed a Petition to Reopen and Set Aside Consent Order ("Petition") in this matter. PPG requests that the Commission set aside the 1957 consent order in this matter pursuant to Rule 2.51 of the Commission's Rules of Practice, 16 CFR 2.51, and the Statement of Policy With Respect to Duration of Competition Orders and Statement of Intention to Solicit Public