

members of the medical staff of Grossmont Hospital in La Mesa, a municipality in central San Diego County, California. ASMG and GAS anesthesiologists make up approximately 75 percent of the anesthesiologists with active medical staff privileges at Grossmont Hospital and work on approximately 70 percent of the cases that require anesthesia services at the hospital.

Anesthesiologists provide anesthesia services to patients primarily at general acute care hospitals and outpatient surgery centers. Those services include evaluating a patient before surgery, consulting with the surgical team, providing pain control and support-of-life functions during surgery, supervising care after surgery in the recovery unit, and medically discharging the patient from the recovery unit. In addition to working on scheduled surgical procedures, anesthesiologists work on unscheduled obstetric and emergency cases at general acute care hospitals. An anesthesiologist who remains available to work on unscheduled cases is said to be "taking call."

Anesthesiologists in San Diego County are reimbursed for their services from several sources. Health insurance companies and other third-party payors typically reimburse anesthesiologists for services rendered to their subscribers during scheduled and unscheduled medical procedures and obstetrical cases through contracts that establish fees and other competitively significant terms. In addition, some hospitals pay anesthesiologists "stipends" for taking call and/or for rendering services to uninsured patients. Some hospitals pay anesthesiologists stipends through contracts that establish a stipend amount and other competitively significant terms.

Absent agreements among competing anesthesiologists, competing anesthesiologists or anesthesiology groups decide independently whether to seek a stipend from a hospital and the amount of the stipend. They also decide independently whether they will terminate or restrict the services they provide to unscheduled or uninsured patients if the hospital refuses to pay them a stipend or if they are dissatisfied with the stipend.

From as early as February 2001 through March 2002, ASMG and GAS discussed between themselves a joint strategy to secure stipends from Grossmont Hospital for taking obstetric call and for rendering services to uninsured emergency room patients. Eventually, ASMG and GAS agreed on the stipend amount both groups would

demand from the hospital for taking obstetric call. ASMG and GAS also discussed reducing their hours of availability for taking call to increase their negotiating power with the hospital. Furthermore, they agreed to maintain a solid front against the hospital to prevent the hospital from (1) negotiating separately with each group to reduce the amount of the stipend or (2) seeking services solely from one group to the exclusion of the other. ASMG and GAS ceased this collusive activity only after the Commission contacted them about this conduct. While the Commission's investigation prevented any anticompetitive effects from occurring, this conduct is a naked restraint, which constitutes an unfair method of competition in violation of section 5 of the FTC Act.

#### *The Proposed Consent Order*

The proposed consent order is designed to prevent recurrence of the illegal concerted actions alleged in the complaint while allowing Respondent to engage in legitimate joint conduct.

Paragraph II.A prohibits Respondent from entering into or facilitating agreements between or among medical practices: (1) To negotiate, to fix, or to establish any fee, stipend, or any other term of reimbursement for the provision of anesthesia services; (2) to deal, to refuse to deal, or to threaten to refuse to deal with any payor of anesthesia services; or (3) to reduce, or to threaten to reduce, the quantity of anesthesia services provided to any purchaser of anesthesia services. A "medical practice" is defined as a bona fide, integrated business entity in which physicians practice medicine together as partners, shareholders, owners, members, or employees, or in which only one physician practices medicine.

Paragraph II.B prohibits Respondent from attempting to engage in any action prohibited by Paragraph II.A. Paragraph II.C prohibits Respondent from encouraging, pressuring, or attempting to induce any person to engage in any action that would be prohibited by Paragraphs II.A and II.B.

Paragraph II contains a proviso that allows Respondent to engage in conduct that is reasonably necessary to the formation or operation of a "qualified risk-sharing joint arrangement" or a "qualified clinically-integrated joint arrangement." To be a "qualified risk-sharing joint arrangement," an arrangement must satisfy two conditions. First, all participating providers must share substantial financial risk through the arrangement and thereby create incentives for the participants jointly to control costs and

improve quality by managing the provision of services. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement. To be a "qualified clinically-integrated joint arrangement," an arrangement must satisfy two conditions. First, all participants must join in active and ongoing programs to evaluate and modify their clinical practice patterns, creating a high degree of interdependence and cooperation among providers to control costs and ensure the quality of services provided. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement. Both definitions reflect the analyses contained in the 1996 FTC/DOJ Statements of Antitrust Enforcement Policy in Health Care.

Paragraphs III through V of the proposed order are reporting and compliance provisions. Paragraph VI is a provision "sunsetting" the order after 20 years.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 03-15366 Filed 6-17-03; 8:45 am]

BILLING CODE 6750-01-P

## FEDERAL TRADE COMMISSION

[File No. 021 0006]

### Grossmont Anesthesia Services Medical Group, Inc.; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before June 30, 2003.

**ADDRESSES:** Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: