

consentagreement@ftc.gov, as prescribed in the **SUPPLEMENTARY INFORMATION** section.

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SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned 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 thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 30, 2003), on the World Wide Web, at "<http://www.ftc.gov/os/2003/05/index.htm>." A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii).

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an agreement containing a proposed consent order with Grossmont Anesthesia Services Medical Group, Inc. ("GAS" or "Respondent"). The agreement settles charges that

Respondent violated section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by facilitating and implementing agreements with Anesthesia Service Medical Group, Inc. ("ASMG") on fees, quantity of anesthesia services provided, and other competitively significant terms. The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify their terms in any way. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by any Respondent that said Respondent violated the law or that the facts alleged in the complaint (other than the jurisdictional facts) are true.

The Complaint Allegations

GAS and ASMG are competing anesthesiology groups that provide anesthesia services for a fee to patients in San Diego County, California. ASMG employs approximately 180 anesthesiologists. GAS is composed of approximately 10 anesthesiologists. GAS and ASMG anesthesiologists are members of the medical staff of Grossmont Hospital in La Mesa, a municipality in central San Diego County, California. GAS and ASMG 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, GAS and ASMG 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, GAS and ASMG agreed on the stipend amount both groups would demand from the hospital for taking obstetric call. GAS and ASMG 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