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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Edith Ramirez, Chairwoman**
Maureen K. Ohlhausen
Terrell McSweeny

In the Matter of	)	
Cooperativa de Médicos Oftalmólogos de Puerto Rico.	)	**Docket No. C-**

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of Cooperativa de Médicos Oftalmólogos de Puerto Rico, hereafter referred to as "Respondent OFTACOOP," and Respondent OFTACOOP having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent OFTACOOP with violating Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent OFTACOOP, its attorneys and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing an admission by Respondent OFTACOOP 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 Respondent OFTACOOP 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 OFTACOOP has violated the 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 comments filed by interested persons 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

makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent OFTACOOP is a not-for-profit cooperative association organized, existing and doing business under and by virtue of the laws of the Commonwealth of Puerto Rico, with its principal place of business located at 1250 Ponce de León Ave., Suite #906, San Juan, Puerto Rico 00907.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent OFTACOOP, 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 OFTACOOP" means Cooperativa de Médicos Oftalmólogos de Puerto Rico, its directors, officers, employees, agents, attorneys, and representatives; its successors and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Respondent OFTACOOP, and the respective directors, officers, employees, agents, attorneys, representatives, successors and assigns of each.

B. "Commission" means the Federal Trade Commission.

C. "Committee" means the Committee for the Supervision and Inspection of the Proceedings of Collective Negotiation established pursuant to Act 228, and includes additional or successor entities established pursuant to Act 228.

D. "Communicate" means to transfer or disseminate any information, regardless of the means by which it is accomplished, including without limitation orally, by letter, e-mail, notice, or memorandum. This definition applies to all tenses and forms of the word "communicate," including, but not limited to, "communicating," "communicated" and "communication."

E. "COSSEC" means the Public Corporation for the Supervision and Insurance of Cooperatives in Puerto Rico.

F. "Ophthalmologist" means a Physician who performs surgery and provides medical and surgical treatment and care of the eyes and visual system.

G. "Participate" in an entity means (1) to be a partner, shareholder, owner, member, or employee of such entity, or (2) to provide services, agree to provide services, or offer to provide services to a Payor through such entity. This definition applies to all tenses and forms of the word "Participate," including, but not limited to, "Participating," "Participated" and "Participation."

H. "Payor" means any Person that pays, or arranges for the payment, for all or any part of any Physician services or hospital services for itself or for any other Person. Payor includes any Person that develops, leases, or sells access to networks of Physicians or hospitals.

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

J. "Physician" means a doctor of allopathic medicine ("M.D."), a doctor of osteopathic medicine ("D.O."), a doctor of chiropractic medicine ("D.C."), or a doctor of podiatric medicine ("D.P.M.")

K. "Act 228" means Puerto Rico Act 228 of December 15, 2015 and includes any implementing regulations subsequently promulgated.

II.

IT IS FURTHER ORDERED that Respondent OFTACOOP, directly or indirectly, or through any corporate or other device, in connection with the provision of ophthalmological 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 Ophthalmologists:

   1. To refuse to deal or threaten to refuse to deal with any Payor regarding any term, condition, or requirement upon which any Ophthalmologist deals, or is willing to deal, with any Payor, including, but not limited to, price terms; or

   2. Not to deal individually with any Payor or not to deal with any Payor other than through Respondent OFTACOOP;

B. Submitting for approval to COSSEC, the Committee, including any Committee member, or any other entity established pursuant to Act 228, any agreement with any Payor if Respondent OFTACOOP, or any of its members, engaged in any acts of coercion, intimidation, or boycott of, or concerted refusal to deal with any Payor seeking to contract with Respondent OFTACOOP.

C. Exchanging or facilitating in any manner the exchange or transfer of information to facilitate any action prohibited by Paragraph II.A. of this Order;

D. Attempting to engage in any action prohibited by Paragraphs II.A. and II.B. of this Order; and

E. 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 of this Order.

Provided, however, that it shall not of itself constitute a violation of Paragraph II. of this Order for Respondent OFTACOOP, when negotiating with any Payor in compliance with Act 228, to:

1. reject any offer or counter-offer or refuse to contract; or

2. exchange such information as is reasonably necessary to contract pursuant to negotiating or contracting with any Payor.

III.

IT IS FURTHER ORDERED that Respondent OFTACOOP shall:

A. Within thirty (30) days after the date this Order issues, send by first-class mail, with return receipt or delivery confirmation, or by facsimile or electronic mail with return confirmation, a copy of this Order, the Complaint and the Analysis of the Proposed Order to Aid Public Comment to each:

   1. Ophthalmologist who Participates, or has Participated, in Respondent OFTACOOP; and

   2. Officer, director, manager and employee of Respondent OFTACOOP.

B. For five (5) years after the date on which this Order is issued, send by first-class mail, with return receipt or delivery confirmation, or by facsimile or electronic mail with return confirmation a copy of this order and the Complaint to each:

   1. Ophthalmologist who begins Participating in Respondent as a provider of ophthalmological services, and who did not previously receive a copy of the Order and the Complaint, within thirty (30) days of the date that such Participation begins;

   2. Person who becomes an officer, director, manager, or employee of Respondent OFTACOOP, and who did not previously receive a copy of the Order and the Complaint, within thirty (30) days of the date that he or she assumes such status with Respondent.

   3. Post and maintain on Respondent OFTACOOP's website, if any, and annually publish in any official annual report or newsletter sent to all ophthalmologists who Participate in Respondent OFTACOOP, this Order and the Complaint, in English and in Spanish, with such prominence as is given to regularly featured articles.

IV.

IT IS FURTHER ORDERED that Respondent OFTACOOP shall file a verified written report within sixty (60) days after the date this Order is issued, annually thereafter for five (5) years on the anniversary of the date this Order is issued, and at such other times as the Commission may by written notice require. Each report shall include, among other information that may be necessary:

A. A detailed description of the manner and form in which Respondent OFTACOOP has complied and is complying with the Order;

B. A copy of each confirmation required by Paragraphs III.A. and B. of this Order.

V.

IT IS FURTHER ORDERED that Respondent OFTACOOP shall notify the Commission at least thirty (30) days prior to:

A. Any proposed dissolution of Respondent OFTACOOP;

B. Any proposed acquisition, merger or consolidation of Respondent OFTACOOP; or

C. Any other change in Respondent OFTACOOP, 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 with reasonable notice to Respondent OFTACOOP, Respondent OFTACOOP shall permit any duly authorized representative of the Commission:

A. Access, during office hours of Respondent OFTACOOP 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 OFTACOOP related to compliance with this Order, which copying services shall be provided by Respondent OFTACOOP at the request of the authorized representative(s) of the Commission and at the expense of Respondent OFTACOOP; and

B. Upon five (5) days' notice to Respondent OFTACOOP and without restraint or interference from Respondent OFTACOOP, to interview officers, directors, or employees of Respondent OFTACOOP, who may have counsel present, regarding such matters.

VII.

IT IS FURTHER ORDERED that this Order shall terminate twenty (20) years from the date the Order is issued.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: