

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :
 :
 Plaintiff, : Civil No. 75-4640

v. :

THE AMERICAN SOCIETY OF : Filed: September 22, 1975
 ANESTHESIOLOGISTS, INC., :

Defendant. :
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COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above-named defendant and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed under Section 4 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. § 4), commonly known as the Sherman Act, in order to prevent and restrain the continuing violation by the defendant, as hereinafter alleged, of Section 1 of said Act (15 U.S.C. § 1).

2. The defendant is found within the Southern District of New York.

II

DEFENDANT

3. The American Society of Anesthesiologists, Inc., (hereinafter referred to as "ASA") is made the defendant herein. ASA is a corporation organized and existing under the laws of the State of New York, with its principal place

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of business in Park Ridge, Illinois. ASA is an association of physicians engaged in the business of providing anesthesia services to the public. Such persons become members of the ASA by joining component societies which are active in 48 states, the District of Columbia and the Commonwealth of Puerto Rico. The component societies control the ASA through the election of delegates and directors who govern ASA and determine its policies.

III

CO-CONSPIRATORS

4. Various other persons, firms, organizations and corporations not made defendants herein, participated as co-conspirators in the violation hereinafter alleged and performed acts and made statements in furtherance thereof. Such co-conspirators include, among others, component societies and members of ASA.

IV

TRADE AND COMMERCE

5. Anesthesiologists are licensed physicians who specialize in inducing a state of anesthesia, usually in connection with the performance of surgery in a hospital. There are approximately 12,200 anesthesiologists in the United States, over 90 percent of whom are members of ASA. Anesthesiologists are generally engaged in the private practice of medicine, deriving their income from fees charged directly to the patient. Members of ASA realize annual revenues in excess of \$675 million.

6. A substantial portion of the fees charged patients by members of ASA are paid directly or indirectly by health insurance carriers. The fees charged by members of ASA for their services have a direct and substantial effect upon the payments made and upon the premiums charged by

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health insurance carriers. The businesses which provide health insurance operate in interstate commerce and there is a substantial movement of monies in interstate commerce pursuant to the terms of health insurance policies.

7. Pursuant to the "Health Insurance for the Aged Act", 42 U.S.C. § 1395, commonly referred to as the "Medicare" program, substantial payments are made by the United States Treasury across state lines through insurance carriers acting as intermediaries, to anesthesiologists located throughout the United States.

8. Pursuant to the "Grants to States for Medical Assistance Programs", 42 U.S.C. § 1396, commonly referred to as the "Medicaid" program, substantial payments are made to anesthesiologists located throughout the United States by state governments from funds received across state lines from the United States Treasury.

9. Substantial quantities of drugs and equipment utilized by anesthesiologists in providing their services are regularly sold and shipped to hospitals in a continuous and uninterrupted flow of interstate commerce by manufacturers and suppliers located in various states, including states other than those in which such drugs and equipment are utilized.

V

VIOLATION ALLEGED

10. For many years up to and including the date of the filing of this complaint, the defendant and co-conspirators have been engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in violation of Section 1 of the Sherman Act. Said violation is continuing and will continue unless the relief hereinafter prayed for is granted.

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11. The unlawful combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among the defendant and co-conspirators to raise, fix, stabilize, and maintain fees charged by members of the defendant for rendering anesthesia services.

12. In furtherance of and in effectuating the aforesaid combination and conspiracy the defendant and co-conspirators have done the things which, as hereinbefore alleged, they agreed and conspired to do, including, among other things, adopting, publishing and circulating relative value guides or schedules which are used by members of ASA in determining fees charged for anesthesia services and which assign specific values to particular procedures.

VI

EFFECTS

13. The aforesaid combination and conspiracy has had the following effects, among others:

- (a) fees for the sale of anesthesia services by members of the ASA have been raised, fixed, stabilized, and maintained at artificial and noncompetitive levels;
- (b) price competition in the provision of anesthesia services by the members of the ASA has been restrained; and
- (c) purchasers of anesthesia services have been denied the right to obtain such services at competitively determined fees.

PRAYER

WHEREFORE, plaintiff prays:

- 1. That the Court adjudge and decree that the defendant and co-conspirators have engaged in an unlawful combination

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and conspiracy in restraint of the aforesaid trade and commerce in violation of Section 1 of the Sherman Act.

2. That the defendant, its officers, directors and agents, and all other persons acting or claiming to act on its behalf, be enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining, or renewing the combination and conspiracy hereinbefore alleged, or from engaging in any other combination, conspiracy, contract, agreement, understanding or concert of action having a similar purpose or effect, and from adopting or following any practice, plan, program, or device having a similar purpose or effect.

3. That the defendant, its officers, directors and agents, and all other persons acting or claiming to act on its behalf, be enjoined and restrained from promulgating, adopting or disseminating any guide or schedule concerning fees or from making any recommendations regarding the calculation of fees to be charged by members.

4. That the plaintiff have such other, further, general and different relief as the case may require and the Court may deem just and proper under the circumstances.

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5. That the plaintiff recover its taxable costs.

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