

[¶ 70,936] United States v. Nassau-Suffolk Pharmaceutical Society, Inc.

In the United States District Court for the Eastern District of New York. Civil No. 63-C-1206. Filed, but not entered, November 7, 1963.

Case No. 1766 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Retail Druggist Association—Prescription Drugs—Consent Judgment.  
—A retail druggist association and its members would be enjoined by a consent judgment.

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from maintaining or adhering to uniform prices for prescription drugs or professional services.

See Price Fixing, Vol. 1, ¶ 4770, Department of Justice Enforcement, Vol. 2, ¶ 8834.10.

For the plaintiff: William D. Kilgore, Jr., John J. Galgay, John D. Swartz, Morris F. Klein and Paul D. Sapienza, Attorneys, Department of Justice.

For the defendant: Arent, Fox, Kintner, Plotkin and Kahn, Washington, D. C.

#### Proposed Final Judgment

Plaintiff, United States of America, having filed its complaint, and the defendant, Nassau-Suffolk Pharmaceutical Society, Inc., having appeared by its attorneys, and the said plaintiff and defendant having each consented to the entry of this Final Judgment herein, without admission by any party in respect to any issue herein.

Now, therefore, before any testimony has been taken and without trial or adjudication of any issue of fact or law herein, and upon consent as aforesaid of the parties hereto, it is hereby,

Ordered, adjudged and decreed as follows:

#### I

##### [*Sherman Act*]

The complaint states a claim against the defendant under Section 1 of the Act of Congress of July 2, 1890 entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended. This Court has jurisdiction of the subject matter hereof and the parties hereto.

#### II

##### [*Definitions*]

As used in this Final Judgment:

(A) "Prescription" is an order for drugs or medicines or combinations or mixtures thereof, written, signed or authorized by a duly licensed physician, dentist, veterinarian or other medical practitioner licensed to write prescriptions intended for the treatment or prevention of disease in man or animals;

(B) "Prescription drug" is a drug or medicine or a combination or mixture thereof sold to fill a prescription;

(C) "Pharmacist" is an individual duly licensed to prepare, compound and dispense prescriptions and to sell drugs, medicines and poisons at retail;

(D) "Prescription pricing schedule" is a document, formula or list designed for use as a guide in computing prices to be charged by pharmacists for prescription drugs;

(E) "Person" is any individual, firm, partnership, corporation, association, trustee or any other business or legal entity.

#### III

##### [*Applicability*]

The provisions of this Final Judgment applicable to defendant, Nassau-Suffolk Pharmaceutical Society, Inc., shall apply to the defendant, its officers, directors, governors, agents, members and employees, committees of defendant, and other persons in active concert or participation with the defendant who receive actual notice of this Final Judgment by personal service or otherwise.

#### IV

##### [*Practices Prohibited*]

Defendant Nassau-Suffolk Pharmaceutical Society, Inc. and each of its members are enjoined and restrained from, directly or indirectly:

(A) Combining or conspiring to establish or maintain uniform consumer prices for prescription drugs or professional services in the State of New York;

(B) Entering into, adhering to, maintaining or furthering any contract, agreement, understanding, plan, or program or conspiracy (1) to fix, determine, maintain or suggest prices, terms or conditions for the sale of prescription drugs or professional services, or (2) to formulate, adopt, issue, distribute, recommend or suggest the use by any pharmacist or any other person of any professional fee schedule, or prescription pricing schedule or other list, formula, guide, schedule, or method for pricing prescription drugs;

(C) Advocating, suggesting, urging, inducing, compelling, or in any other manner influencing or attempting to influence any person to use or adhere to any professional

fee schedule or prescription pricing schedule or schedules, or any other list, formula, guide, schedule or method for pricing prescription drugs;

(D) Policing or making individual contact with any pharmacist or other person or devising or putting into effect any procedure to ascertain, determine, fix, influence, or suggest the price at which any prescription drug or professional service is or may be sold or offered by any pharmacist.

Nothing in subsections (B), (C), or (D) of this Section IV shall be construed to restrain any pharmacy owner or pharmacist member of the defendant Society or any other associations from requiring his employees to sell prescription drugs at prices, and upon terms and conditions of sale, established by such pharmacy owner or pharmacist in pharmacies owned or operated by said pharmacist or pharmacy owner.

At any time, any agency of the United States or of the State of New York may, upon grounds of undue hardship to it, and without having standing as a party herein, petition this Court for an order enabling the defendant Society to negotiate and enter into a contract for the sale of prescription drugs where the price of such prescription drugs will be paid for by the petitioning agency. Such petition may be in the form of a letter to the Court with copies to be served on both the plaintiff and defendant herein. The matter will then be set for hearing at which time the petitioning agency may produce witnesses and other evidence in support of its petition. Plaintiff and defendant will be permitted to be heard and make objections to any such proposed negotiation or contract. Permission by this Court to enter into any such contract shall not be considered an adjudication as to the legality or illegality of such contract under the antitrust laws, nor shall it be deemed to bar or estop the plaintiff from attacking the legality of any such contract under the antitrust laws generally.

## V

### [Compliance]

Defendant Nassau-Suffolk Pharmaceutical Society, Inc. is ordered and directed:

(A) Within 60 days after the entry of this Final Judgment, to serve by mail upon each of its members a conformed copy of

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this Final Judgment. Said defendant is further ordered and directed to thereupon file an affidavit with the clerk of this Court that it has done so, which affidavit shall set forth the name and address of each person so served;

(B) To furnish a copy of this Final Judgment to, or to serve same by registered or certified mail return receipt requested upon, each new member thereof at the time of acceptance of such membership and to obtain and keep in its files so long as he or she remains a member, a receipt therefor signed by each new member or a registered or certified mail receipt for each such Final Judgment served by mail.

(C) Within 60 days after entry of this Final Judgment, to promulgate and enforce a requirement that as a condition of membership or retention of membership each present and future member deliver to the defendant Society for destruction all copies in his or her possession or control of prescription pricing schedules obtained from or through the defendant Society or a statement that he or she has no such schedules in his or her possession or control;

(D) To promptly destroy all copies of such schedules in its possession or delivered to it as hereinabove provided.

## VI

### [Inspection]

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant, and subject to any legally recognized privilege, be permitted:

(A) Reasonable access during the office hours of the defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant, relating to any matters contained in this Final Judgment; and

(B) Subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers and employees of the defendant (who may have counsel present) regarding such matters.

Upon such written request, defendant shall submit such written reports to the Department of Justice with respect to matters contained in this Final Judgment as from time to time may be necessary to the enforcement of said Final Judgment. No information obtained by the means provided in this Section VI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of plaintiff, except in the course of legal proceedings to which the United States is a party, or as otherwise required by law.

## VII

### *[Jurisdiction Retained]*

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification or vacating of any of the provisions thereof, and for the enforcement of compliance therewith and the punishment of violation thereof.