

# Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Northern California Pharmaceutical Association., U.S. District Court, N.D. California, 1963 Trade Cases ¶70,690, (Apr. 9, 1963)

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United States v. Northern California Pharmaceutical Association.

1963 Trade Cases ¶70,690. U.S. District Court, N.D. California, Southern Division. Civil No. 39629. Entered April 9, 1963. Case No. 1580 in the Antitrust Division of the Department of Justice.

## Sherman Act

**Price Fixing—State Pharmaceutical Association—Prescription Drugs—Consent Judgment.**—A state pharmaceutical association was prohibited, under the terms of a proposed consent judgment, from conspiring to fix prices of prescription drugs sold by its member pharmacists, formulating and distributing prescription drug pricing schedules, urging or influencing members to adhere to pricing schedules and contacting individual members to fix prices. Also, members of the association are prohibited from agreeing to fix prices at which they will sell prescriptions.

For the plaintiff: Lee Loevinger, Assistant Attorney General, Harry G. Sklarsky, William D. Kilgore, Jr., Lyle L. Jones, Don H. Banks, Gilbert Pavlovsky, Attorneys, Department of Justice, and Cecil F. Poole, United States Attorney.

For the defendant: Broad, Busterud and Khourie, by John A. Busterud, for Northern California Pharmaceutical Association.

## Final Judgment

SWEIGERT, District Judge [ *In full text*]: Plaintiff, United States of America, having filed its complaint herein on December 28, 1960, and its amended complaint on July 12, 1961; defendant, Northern California Pharmaceutical Association, having filed its answer to said amended complaint on August 31, 1961; the Court having entered a preliminary injunction in this matter on September 21, 1961; and the parties hereto by their respective attorneys having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without any admission by or estoppel of any party as to any such issue.

Now, therefore, it is hereby ordered, adjudged and decreed, as follows:

### I

#### [ *Sherman Act* ]

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The amended complaint states a claim upon which relief may be granted 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.

### II

#### [ *Definitions* ]

As used herein:

- (a) "Prescription drug" is a medication for treatment of humans, sold to fill a prescription written by a physician, or other person duly licensed to prescribe for the treatment of human ailments;
- (b) "Pharmacist" is an individual duly licensed to fill prescriptions written for the treatment of human ailments;

(c) "Prescription pricing schedule" is a formula or price list designed for use in computing prices to be charged for prescription drugs;

(d) "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, Northern California Pharmaceutical Association, shall apply to defendant, its officers, directors, agents and employees, and other persons in active concert or participation with defendant who shall receive actual notice of this Final Judgment by personal service or otherwise.

### IV

#### [ *Practices Prohibited* ]

Defendant is hereby perpetually enjoined and restrained from, directly or indirectly:

(a) Combining or conspiring to establish and maintain uniform consumer prices for prescription drugs in the State of California;

(b) Entering into, adhering to, maintaining or furthering any contract, agreement, understanding, plan or program (i) to fix, determine, maintain or suggest prices or other terms or conditions for the sale of prescription drugs, (ii) to formulate, adopt, issue, distribute, recommend or suggest the use by any pharmacist or any other person of any prescription pricing schedule or other list, formula, guide, schedule or method for pricing prescription drugs, or a professional fee to be charged in connection with the sale of a prescription drug;

(c) Advocating, suggesting, urging, inducing, compelling, or in any other manner influencing or attempting to influence any person to use or adhere to any prescription pricing schedule or schedules or any other list, formula, guide, schedule or method for pricing prescription drugs, or a professional fee to be charged in connection with the sale of a prescription drug;

(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 is or may be sold by any pharmacist, or a professional fee to be charged in connection with the sale of a prescription drug.

### V

#### [ *Restrictions as to Members* ]

Each of the members of defendant Association, including pharmacists and pharmacy owners who become members of defendant Association after the filing of this judgment, are hereby perpetually enjoined and restrained from directly or indirectly:

Entering into, adhering to, maintaining or furthering any contract, agreement or understanding with any other pharmacist or pharmacy owner or group or association of pharmacists or pharmacy owners (1) to fix, determine, maintain or suggest prices, terms or conditions for the sale of prescription drugs, or (2) to formulate, adopt, issue, distribute, recommend or suggest the use by any pharmacist or any other person of any prescription pricing schedule or other list, formula, guide, schedule or method for pricing prescription drugs, or a professional fee to be charged in connection with the sale of a prescription drug.

### VI

#### [ *Permissive Provisions* ]

Nothing in this Final Judgment shall be construed to restrain (1) any member owner or operator of a pharmacy from requiring his employees to sell prescription drugs at prices, and upon terms and conditions of sale, established by such pharmacy owner or operator; (2) the co-owners or co-operators of a pharmacy from agreeing together as to the prices, terms and conditions of sale at which prescription drugs are to be sold in said pharmacy.

## VII

### **[ *Dissolution of Pricing Committee* ]**

Defendant having been ordered and directed to dissolve its Suggested Prescription Pricing Committee by the preliminary injunction filed herein on September 21, 1961, is hereby perpetually enjoined and restrained from forming, appointing, or maintaining such committee or any similar committee.

## VIII

### **[ *Compliance* ]**

(a) Defendant is ordered and directed, within 30 days after the entry of this Final Judgment, to serve by mail upon each of its members a conformed copy of 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) Defendant is ordered and directed to furnish a copy of this Final Judgment to each new member thereof at the time of acceptance of such membership and to obtain from each such member, and keep for ten years in its files, a receipt therefor signed by each such new member.

## IX

### **[ *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 defendant, and subject to any legally recognized privilege, be permitted:

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

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

Upon 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 IX 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.

## X

### **[ *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 the 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.