

H. Tamis, M.D., individually and as president of said corporation, hereinafter sometimes referred to as proposed respondents or respondents, and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between proposed respondents and counsel for the Federal Trade Commission that:

1. Proposed respondent Arizona Institute of Reproductive Medicine, Ltd., is a limited corporation existing and doing business under and by virtue of the laws of the State of Arizona, with its office and principal place of business located at 2850 North 24th Street, Suite 500-A, Phoenix, Arizona 85008.

Proposed respondent Robert H. Tamis, M.D., is president of respondent Arizona Institute of Reproductive Medicine. His principal office or place of business is the same as that of the corporate respondent. Dr. Tamis formulates, directs and controls the acts and practices of said corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than the jurisdictional facts, or of violations of law as alleged in the draft of complaint.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondents: (a) issue its complaint corresponding in form and substance with the draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding; and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to-order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent have read the draft complaint and the following order. Proposed respondents understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

"Competent and reliable scientific evidence" shall mean those tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

I

It is ordered that respondents Arizona Institute of Reproductive Medicine, Ltd., a limited corporation, and Robert H. Tamis, M.D., individually and as president of said corporation, their successors and assigns, officers, agents, representatives, and employees, directly

or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, sale or offering for sale of services relating to the treatment of infertility, do forthwith cease and desist from representing, directly or by implication, that respondents' success rates in terms of achieving deliveries is higher than or compares favorably with the success rates of any single provider or group of providers of these services, unless at the time of making such a representation, respondents possess and rely upon competent and reliable scientific evidence for making such a comparison which shall, at a minimum, consist of results for its own patients that are based upon the same criteria for determining the calculation of delivery rates that were used to produce the results with which the comparison is made, or otherwise misrepresenting the past or present success of respondents in achieving live births or pregnancies or the past or present success of any single provider or group of providers of these services in achieving live births or pregnancies.

II

It is further ordered that respondents, shall forthwith distribute a copy of this Order to each of their officers, agents, representatives, and employees, who are engaged in the preparation and placement of advertisements or promotional materials, who communicated with patients or prospective patients, or who have any responsibilities with respect to the subject matter of this Order; and for a period of ten (10) years from the date of entry of this Order, distribute same to all of respondents' future officers, agents, representatives, and employees having said responsibilities.

III

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

b. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.