

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Lina M. Khan, Chair**
 Rebecca Kelly Slaughter
 Alvaro M. Bedoya
 Melissa Holyoak
 Andrew Ferguson

In the Matter of

Welsh, Carson, Anderson & Stowe XI, L.P.,
a limited partnership,

WCAS XI Associates, LLC,
a limited liability company,

Welsh, Carson, Anderson & Stowe XII, L.P.,
a limited partnership,

WCAS XII Associates, LLC,
a limited liability company,

WCAS Management Corporation,
a corporation,

WCAS Management, L.P.,
a limited partnership, and

WCAS Management, LLC,
a limited liability company.

DECISION AND ORDER
Docket No. C-

DECISION

The Federal Trade Commission (“Commission” or “FTC”) initiated an investigation of certain acts and practices of Welsh, Carson, Anderson & Stowe XI, L.P., WCAS XI Associates, LLC, Welsh, Carson, Anderson & Stowe XII, L.P., WCAS XII Associates, LLC, WCAS Management Corporation, WCAS Management, L.P., and WCAS Management, LLC (“Respondents”). The Commission’s Bureau of Competition prepared and furnished to Respondents the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint would charge Respondents

with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45 (the “Act”). Respondents and the Bureau of Competition executed an Agreement Containing Consent Order (“Consent Agreement”) containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission’s rules, and (4) a proposed Decision and Order.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the Act, and that a Complaint should issue stating its charges in that respect. The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments; at the same time, it issued and served its Complaint. The Commission duly considered any comments received from 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 makes the following jurisdictional findings:

1. Respondent Welsh, Carson, Anderson & Stowe XI, L.P. is a limited partnership organized, existing, and doing business under, and by virtue of, the laws of Delaware, with its executive offices and principal place of business at 599 Lexington Ave. Suite 1800, New York, New York, 10022.
2. Respondent WCAS XI Associates, LLC is a limited liability company organized, existing, and doing business under, and by virtue of, the laws of Delaware, with its executive offices and principal place of business at 599 Lexington Ave. Suite 1800, New York, New York, 10022.
3. Respondent Welsh, Carson, Anderson & Stowe XII, L.P. is a limited partnership organized, existing, and doing business under, and by virtue of, the laws of Delaware, with its executive offices and principal place of business at 599 Lexington Ave. Suite 1800, New York, New York, 10022.
4. Respondent WCAS XII Associates, LLC is a limited liability company organized, existing, and doing business under, and by virtue of, the laws of Delaware, with its executive offices and principal place of business at 599 Lexington Ave. Suite 1800, New York, New York, 10022.
5. Respondent WCAS Management Corporation is a corporation organized, existing, and doing business under, and by virtue of, the laws of Delaware, with its executive offices and principal place of business at 599 Lexington Ave. Suite 1800, New York, New York, 10022.
6. Respondent WCAS Management, L.P. is a limited partnership organized, existing, and doing business under, and by virtue of, the laws of Delaware, with its executive offices and principal place of business at 599 Lexington Ave. Suite 1800, New York, New York, 10022.

7. Respondent WCAS Management, LLC is a limited liability company organized, existing, and doing business under, and by virtue of, the laws of Delaware, with its executive offices and principal place of business at 599 Lexington Ave. Suite 1800, New York, New York, 10022.
8. The Commission has jurisdiction of the subject matter of this proceeding and over Respondents, and the proceeding is in the public interest.

ORDER

I. Definitions

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Fund XI” means Welsh, Carson, Anderson & Stowe XI, L.P. and its successors and assigns.
- B. “WC XI Associates” means WCAS XI Associates, LLC and any entities in which it currently, or in the future, has a Controlling Interest, their respective successors and assigns, excluding, in each case, all entities in which the WCAS Investment Funds currently or in the future have any holdings (e.g., portfolio companies).
- C. “Fund XII” means Welsh, Carson, Anderson, & Stowe XII, L.P. and its successors and assigns.
- D. “WC XII Associates” means WCAS XII Associates, LLC and any entities in which it currently, or in the future, has a Controlling Interest, their respective successors and assigns, excluding, in each case, all entities in which the WCAS Investment Funds currently or in the future have any holdings (e.g., portfolio companies).
- E. “WCAS Management Corporation” means WCAS Management Corporation and any entities in which it currently, or in the future, has a Controlling Interest, their respective successors and assigns, excluding, in each case, all entities in which the WCAS Investment Funds currently or in the future have any holdings (e.g., portfolio companies).
- F. “WCAS Management, L.P.” means WCAS Management, L.P. and any entities in which it currently, or in the future, has a Controlling Interest, their respective successors and assigns, excluding, in each case, all entities in which the WCAS Investment Funds currently or in the future have any holdings (e.g., portfolio companies), and any New WCAS Management Entity.
- G. “WCAS Management, LLC” means WCAS Management, LLC and any entities in which it currently, or in the future, has a Controlling Interest, their respective successors and assigns, excluding, in each case, all entities in which the WCAS Investment Funds currently or in the future have any holdings (e.g., portfolio companies).

- H. “Respondent” or “Respondents” means individually or collectively Fund XI, WC XI Associates, Fund XII, WC XII Associates, WCAS Management Corporation, WCAS Management, L.P., or WCAS Management, LLC.
- I. “WCAS Investment Funds” means Fund XI; Fund XII; WCAS XIII, L.P. (“Fund XIII”); WCAS XIV, L.P. (“Fund XIV”); and any New WCAS Fund.
- J. “WCAS Party” or “WCAS Parties” means individually or collectively, Respondents and WCAS Investment Funds.
- K. “Advance Notice” means written notice to the Commission before a transaction closes that includes a copy of the transaction agreement (or the most current draft or term sheet, if not finalized) and transaction-related documents (*i.e.*, documents submitted, or the type to be submitted, in response to Items 4(c) and 4(d) of the Hart-Scott-Rodino notification form).
- L. “Anesthesia Business” means, in relation to a Transaction, any entity, including any partnership, corporation, or company, that generated 50% or more of its revenues from Anesthesia Services in the most recently completed fiscal year at the time of the relevant Transaction; *provided, however*, that USAP is not an Anesthesia Business for purposes of this Decision and Order.
- M. “Anesthesia Services” means services performed in a hospital inpatient or emergency room setting subject to anesthesia administration requirements at 42 C.F.R. 482.52(a), including general anesthesia, regional anesthesia, and monitored anesthesia care but not topical or local anesthesia, moderate sedation/analgesia, pain management, minimal sedation, “rescue capacity,” or similar services.
- N. “Controlled Anesthesia Business” means an Anesthesia Business in which one or more WCAS Parties collectively have a Controlling Interest at the time of a Transaction.
- O. “Controlled Hospital-Based Physician Practice” means a Hospital-Based Physician Practice in which one or more WCAS Parties collectively have a Controlling Interest at the time of a Transaction.
- P. “Controlling Interest” means that the WCAS Parties (i) have 50% or greater ownership interest or voting rights, including voting rights designated by proxy, aggregated across all the WCAS Parties, in an entity; or (ii) have the rights to appoint 50% or more of the directors on an entity’s board of directors.
- Q. “Fund” means one or more commonly controlled investment vehicles that are advised by an investment manager or advisor and which invest and manage capital that is collected from those vehicles’ participants or investors.
- R. “Hospital-Based Physician Practice” means any entity (including any partnership, corporation, or company) that, in the most recently completed fiscal year at the time of

the relevant Transaction, generated 50% or more of its revenues from services, such as pathology, anesthesia, or emergency medicine, furnished in a hospital inpatient or emergency room setting and through the use of the facilities and equipment, including qualified electronic health records, of the hospital. The determination of whether an entity is a “Hospital-Based Physician Practice” shall be made on the basis of the site of service and without regard to any employment or billing arrangement between the entity and any other provider; *provided, however*, that USAP is not a Hospital-Based Physician Practice for purposes of this Decision and Order.

- S. “Management Rights” means the right of any WCAS Party to cause USAP to conduct its business operations in any particular way, including causing USAP to enter into or terminate any specific contract or Transaction; buying, selling, or otherwise transferring specific assets; hiring, terminating, promoting, disciplining, or reassigning any particular employee; or negotiating or setting specific prices.
- T. “MSA” means a metropolitan statistical area defined by the Bureau of Statistics (which may cross state lines) and is a statistical area comprising a central city defined by a built-up area with a minimum population of 50,000 and a high level of social and economic integration.
- U. “New WCAS Fund” means any Fund that is created or managed on or after issuance of this Order by WCAS Management, L.P.
- V. “New WCAS Management Entity” means any entity formed on or after the issuance of this Order to advise or manage any Fund associated with “Welsh, Carson, Anderson & Stowe,” “WCAS,” or any successor brand.
- W. “Other WC Anesthesia Business” means an Anesthesia Business in which the WCAS Parties have an Other WC Interest at the time of a Transaction.
- X. “Other WC Interest” means any ownership interest or voting rights, including voting rights designated by proxy, aggregated across all the WCAS Parties, in an entity or its board of directors that is not a Controlling Interest.
- Y. “Pro Rata Ownership of USAP” means the percentage of ownership the WCAS Parties have in the equity securities of USAP on the date this Order is issued, as measured against total equity ownership of USAP as of such date.
- Z. “Pro Rata Control of USAP” means the percentage of voting shares or voting rights, including proxy rights, of USAP held by the WCAS Parties on the date this Order is issued, as measured against total voting shares or voting rights of USAP as of such date.
- AA. “Transaction” means an acquisition of, investment in, or purchase of substantially all assets of an entity.

- BB. “USAP” means U.S. Anesthesia Partners, Inc., and any joint venture, subsidiary, division, group, or affiliate controlled currently or in the future by U.S. Anesthesia Partners, Inc., and their successors and assigns.

II. Prohibited Conduct with Respect to USAP

IT IS ORDERED that:

- A. The WCAS Parties shall not, either directly or indirectly or through any corporate or other device, individually or collectively, increase their Pro Rata Ownership of USAP and their Pro Rata Control of USAP, including by providing new financing to USAP that would increase the WCAS Parties’ Pro Rata Ownership of USAP or Pro Rata Control of USAP.

Provided, however, a passive increase in the Pro Rata Ownership or Pro Rata Control of USAP that results from a repurchase or redemption of USAP shares made in the ordinary course of USAP’s business (*e.g.*, a provider or employee leaving USAP and selling back shares to USAP) is not prohibited under this Paragraph II.A.

- B. The WCAS Parties, collectively, shall not have Management Rights over USAP and shall have no more than one board member on the USAP board of directors, and that board member may not be the chairperson of the board.

Provided, however, that nothing in this Paragraph II.B shall prevent a director from fulfilling their fiduciary obligations to USAP.

- C. The WCAS Parties will allow USAP to terminate immediately upon written notice any contract under which any WCAS Party provides services to USAP without such WCAS Party seeking any type of damages or penalties from USAP for such termination. The applicable WCAS Party will send a written notice to USAP granting such termination right and work in good faith to request that USAP amend any existing agreement within 45 days of issuance of this Order to reflect USAP’s termination rights.

III. Future Investment in Anesthesia Businesses

IT IS FURTHER ORDERED that:

- A. Without prior approval of the Commission using the approval process outlined in 16 C.F.R. § 2.41(f):
1. No WCAS Party shall invest in or acquire any ownership interest or any other interest, in whole or in part, in any Anesthesia Business in the United States; and
 2. No Controlled Anesthesia Business shall invest in or acquire directly or indirectly, through subsidiaries or otherwise, any ownership interest or any other interest, in whole or in part, in any Anesthesia Business that does business in the same state or MSA as the acquiring Controlled Anesthesia Business or any other Controlled

Anesthesia Business or Other WC Anesthesia Business.

- B. The applicable WCAS Party shall provide notice by email to the Commission's Office of the Secretary at ElectronicFilings@ftc.gov and the Assistant Director of the Commission's Health Care Division within 10 days after a Transaction is consummated between an Other WC Anesthesia Business and an Anesthesia Business operating in the same state or MSA. Notice under this Paragraph III.B shall include the names of the parties to a Transaction, the state and MSAs in which each of the entities that is a party to the Transaction does business, the price of the Transaction, and the date the Transaction was consummated.

Provided, however, written notice under this Paragraph III.B is not required for a Transaction in which: (i) the WCAS Parties collectively own 10% or less of the outstanding voting securities or valuation of the Other WC Anesthesia Business; and (ii) no WCAS Party participates in the formulation, determination, or direction of the basic business decisions of the Other WC Anesthesia Business.

IV. Future Investment in Hospital-Based Physician Practices

IT IS FURTHER ORDERED that:

At least 30 days prior to the closing of any Transaction that results in a WCAS Party or a Controlled Hospital-Based Physician Practice acquiring, in whole or in part, a Controlling Interest in any Hospital-Based Physician Practice that operates in the same state or MSA as a Controlled Hospital-Based Physician Practice of the same type, the applicable WCAS Party or Controlled Hospital-Based Physician Practice shall provide Advance Notice by email to the Commission's Office of the Secretary at ElectronicFilings@ftc.gov and the Assistant Director of the Commission's Health Care Division.

V. Notification of a New WCAS Fund or New WCAS Management Entity

IT IS FURTHER ORDERED that, if any New WCAS Fund or any New WCAS Management Entity is created on or after the issuance of this Order, WCAS Management L.P. shall notify the Commission of the identity of such New WCAS Fund or New WCAS Management Entity. Such notice shall be delivered to the Commission within 10 business days of (x) such New WCAS Fund's first closing (*i.e.*, in which it first receives proceeds from its investors), or (y) the formation of such New WCAS Management Entity, as applicable.

VI. Commission Litigation with USAP

IT IS FURTHER ORDERED that, in connection with any legal proceeding brought by the Commission arising out of the investigation conducted by FTC staff under File No. 2010031, the WCAS Parties shall:

- A. Agree to service of process of all Commission subpoenas issued under Rule 45 of the Federal Rules of Civil Procedure or Rule 3.34 of the Commission Rules of Practice; and agree not to object based on the distance of the witness from the trial location;

- B. Not object to or file a motion to quash, on the grounds that the subpoenas are unduly burdensome because the WCAS Parties are third parties, subpoenas from the Commission for the deposition testimony of up to two of the WCAS Parties' officer(s), director(s), agent(s), or employee(s), or corporate representative(s) (designated under Federal Rule of Civil Procedure 30(b)(6) or Rule 3.33(c)(1) of the Commission Rules of Practice). Such depositions shall be scheduled at mutually agreeable dates, times, and locations in the United States; *provided, however*, this does not preclude the Commission from seeking deposition testimony from more than two WCAS Parties' officer(s), director(s), agent(s), or employee(s), or corporate representative(s); *provided further, however*, the WCAS Parties reserve all rights to object to such further deposition testimony;
- C. Not object to or file a motion to quash, on the grounds that the subpoenas are unduly burdensome because the WCAS Parties are third parties, subpoenas from the Commission for the trial testimony of up to two of the WCAS Parties' officer(s), director(s), agent(s), or employee(s), or corporate representative(s); *provided, however*, this does not preclude the Commission from seeking trial testimony from more than two WCAS Parties' officer(s), director(s), agent(s), or employee(s), or corporate representative(s); *provided further, however*, the WCAS Parties reserve all rights to object to such further trial testimony;
- D. Upon request by the Commission, provide a former employee's most recent contact information and waive any non-disclosure agreement(s) that would impact the former employee's ability to cooperate or testify;
- E. Not object on grounds of timeliness to any motion(s) to compel the production of documents that the WCAS Parties withheld as privileged or protected by the work product doctrine during the FTC Investigation; and
- F. Use reasonable best efforts to assist the Commission in authenticating documents under the Federal Rules of Evidence and negotiate in good faith with the Commission to provide a declaration, affidavit, and/or sponsoring witness, if necessary, to establish the authenticity and admissibility of any documents and/or data that the WCAS Parties produce or have produced to the Commission under Federal Rule of Evidence 902(11) and 902(12) or Rule 3.43(c) of the Commission Rules of Practice.

VII. Compliance Reports

IT IS FURTHER ORDERED that, WCAS Management, L.P., on behalf of the WCAS Parties, shall file verified written reports ("Compliance Reports") in accordance with the following:

- A. WCAS Management, L.P. shall submit:
 - 1. Interim Compliance Report 60 days after the date this Order is issued;
 - 2. Annual Compliance Reports one year after the date this Order is issued, and

annually for the next 9 years on the anniversary of that date; and

3. Additional Compliance Reports as the Commission or its staff may request.
- B. Each Compliance Report shall contain sufficient information and documentation to enable the Commission to determine independently whether each WCAS Party is in compliance with this Order. Conclusory statements that a WCAS Party has complied with its obligations under the Order are insufficient. WCAS shall include in its reports, among other information or documentation that may be necessary to demonstrate compliance, a full description of the measures each WCAS Party has implemented and plans to implement to comply with each paragraph of this Order, a list of each currently operating WCAS Investment Fund, and, separately for each WCAS Investment Fund, a list of each Controlling Interest in a physician practice that generated more than 50% of its revenues from services, such as pathology, anesthesia or emergency medicine, furnished in a hospital inpatient or emergency room setting and through the use of the facilities and equipment, including qualified electronic health records, of the hospital, in the most recent fiscal year before the Compliance Report.
 - C. For a period of 5 years after filing a Compliance Report, the WCAS Parties shall retain all material written communications with each individual holding identified in each Compliance Report as required by Paragraph VII.B and all non-privileged internal memoranda, reports, and recommendations concerning fulfilling the WCAS Parties' obligations under this Order during the period covered by such Compliance Report. The WCAS Parties shall provide copies of these documents to Commission staff upon request.
 - D. WCAS Management, L.P. shall verify each Compliance Report in the manner set forth in 28 U.S.C. §1746 by an officer or employee specifically authorized to perform this function. WCAS Management, L.P. shall file Compliance Reports with the Secretary of the Commission at ElectronicFilings@ftc.gov and the Compliance Division at bccompliance@ftc.gov; as required by Commission Rule 2.41(a), 16 C.F.R. §2.41(a).

VIII. Change in Respondents

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least 30 days prior to:

- A. The dissolution of Welsh, Carson, Anderson & Stowe XI, L.P., WCAS XI Associates, LLC, Welsh, Carson, Anderson & Stowe XII, L.P., WCAS XII Associates, LLC, WCAS Management Corporation, WCAS Management, L.P., or WCAS Management, LLC;
- B. The acquisition, merger, or consolidation of Welsh, Carson, Anderson & Stowe XI, L.P., WCAS XI Associates, LLC, Welsh, Carson, Anderson & Stowe XII, L.P., WCAS XII Associates, LLC, WCAS Management Corporation, WCAS Management, L.P., or WCAS Management, LLC; or

- C. Any other change in Respondents, including assignment and the creation, sale, or dissolution of subsidiaries or Funds if such change might affect compliance obligations arising out of this Order.

IX. Access

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 and upon 5 days' notice to Respondents, that Respondents shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of Respondents 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 Respondents related to compliance with this Order, which copying services shall be provided by Respondents at their expense; and
- B. To interview directors, officers, or employees of Respondents, who may have counsel present, regarding such matters.

X. Purpose

IT IS FURTHER ORDERED that the purpose of this Order is to remedy the harm to competition the Commission alleged in its Complaint and prevent recurrence of this type of competitive harm in other Anesthesia Businesses or other Hospital-Based Physician Practices.

XI. Term

IT IS FURTHER ORDERED that this Order shall terminate 10 years from the date it is issued.

By the Commission

April J. Tabor
Secretary

SEAL:
ISSUED: