

**COMMONWEALTH OF PENNSYLVANIA
BY ATTORNEY GENERAL JOSH SHAPIRO**

Y.

Respondent

Term:

Case No.: _____

WHEREAS, Respondent is Pennsylvania corporation registered with the Pennsylvania Department of State, Bureau of Corporations and Charitable Organizations: Corporations Section (“Corporation Bureau”), with a registered business address of 347 Pottsville-St. Clair Highway, Suite 2, Pottsville, PA 17901;

WHEREAS, Respondent conducts business under the name “American Surgical Supply” which is registered as a fictitious name with the Corporations Bureau, with a registered business address of 347 Pottsville-St. Clair Highway, Suite 2, Pottsville, Pennsylvania 17901;

WHEREAS, Respondent has at all times relevant and material hereto, engaged in trade and commerce within the Commonwealth of Pennsylvania by operating a medical supply store at the American Surgical Supply location of 347 Pottsville-St. Clair Highway, Suite 2, Pottsville, Pennsylvania 17901;

WHEREAS, based on its investigation, the Commonwealth contends that Respondent has engaged in conduct in violation of the *Consumer Protection Law* and the Pennsylvania *Price Gouging Act*, 73 P.S. §§ 232.1, *et seq.* (hereinafter the “*Price Gouging Law*”);

WHEREAS, this Assurance of Voluntary Compliance is accepted by the Commonwealth pursuant to Section 201-5 of the *Consumer Protection Law* in lieu of commencing statutory proceedings under Section 201-4 thereof;

WHEREAS, this Assurance of Voluntary Compliance does not constitute an approval by the Commonwealth of any of the Respondent’s former or current business practices;

WHEREAS, under Section 201-5 of the *Consumer Protection Law*, this Assurance of Voluntary Compliance, and all negotiations and discussions leading up to the drafting of the Assurance, and the allegations raised in the Cease and Desist Letter dated April 3, 2020, do not constitute, nor shall they be construed as, an admission of liability or a violation of any state, federal or local law, ordinance or regulation, by American Surgical Supply, Inc. d/b/a American Surgical Supply, or any of its officers, directors, shareholders, employees, representatives, or agents. 73 P.S. § 201-5;

WHEREAS, the Respondent agrees to comply with the *Consumer Protection Law* and the *Price Gouging Law* and desires to comply with the civil laws of the Commonwealth; and

WHEREAS, the Effective Date of this Assurance of Voluntary Compliance shall be the date upon which it is executed by both parties.

SETTLEMENT TERMS

NOW THEREFORE, Respondent agrees for itself, its successors, assigns, officers, partners, agents, representatives, employees, and all other persons acting on its behalf, jointly or individually, directly or indirectly or through any corporate or business device, as follows:

I. Facts and Legal Violations

A. Under the *Price Gouging Law*, during and within 30 days of the termination of a state of disaster emergency declared by the Governor pursuant to the provisions of 35 Pa. C.S. § 7301(c) (relating to general authority of the Governor), it is unlawful for any party within the chain of distribution of consumer goods or services or both to sell or offer to sell goods or services within the geographic region that is the subject of the declared emergency for an amount which represents an unconscionably excessive price. 73 P.S. § 232.4(a).

B. In addition, it is *prima facie* evidence that a price is unconscionably excessive if, during and within thirty (30) days of the termination of a state of disaster emergency, any party within the chain of distribution charges a price that exceeds an amount equal to or in excess of twenty percent (20%) of the average price at which the same or similar consumer goods or services were obtainable in the affected area during the last seven (7) days immediately prior to the declared state of emergency. 73 P.S. § 232.4(b).

C. On March 6, 2020, the Governor of Pennsylvania declared a State of Disaster Emergency for the Commonwealth of Pennsylvania related to the Covid-19 pandemic.

D. As of the Effective Date of this Assurance of Voluntary Compliance, a State of Disaster Emergency is currently in place for the Commonwealth of Pennsylvania.

E. Respondent is and/or was involved in the chain of distribution of N95 face masks. Respondent sells and/or sold N95 face masks to consumers primarily for personal, family or household purposes.

F. The Commonwealth alleges that during the period of a State of Disaster Emergency, as declared on March 6, 2020, Respondent sold or offered to sell N95 face masks for an unconscionably excessive price in violation of the *Price Gouging Law* and the *Consumer Protection Law*.

G. The Commonwealth alleges that in at least four hundred eighty-five (485) instances during the State of Disaster Emergency, Respondent charged a price for N95 face masks in excess of twenty percent (20%) of the average price at which the same or similar products were obtainable in the affected area seven (7) days prior to March 6, 2020.

H. The Commonwealth alleges that by reason of the aforesaid conduct, Respondent's methods, acts or practices constitute violations of the *Price Gouging Law*, including, but not limited to, Section 232.4(a), which prohibits any party within the chain of distribution of consumer goods or services or both to sell or offer to sell the goods or services within the geographic region that is the subject of the declared emergency for an amount which represents an unconscionably excessive price. 73 P.S. § 232.4(a).

I. The Commonwealth alleges that by reason of the aforesaid conduct, Respondent's aforesaid methods, acts or practices constitute unfair methods of competition and unfair acts or

practices in the conduct of trade or commerce prohibited by Section 201-3 of the *Consumer Protection Law*, as defined by Section 201-2 of the same, including, but not limited to, the following:

1. Section 201-2(4)(v), which prohibits representing that goods or services have a sponsorship, approval, characteristics, ingredients, uses, benefits or qualities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have. 73 P.S. § 201-2(4)(v); and

2. Section 201-2(4)(xxi), which prohibits engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding. 73 P.S. § 201-2(4)(xxi).

73 P.S. §§ 201-3 and 201-2(4)(v) and(xxi).

II. Injunctive Relief & Affirmative Relief

- A. Respondent SHALL NOT, in the future, engage in conduct which violates the *Consumer Protection Law* and any future amendments thereto, including, but not limited to:

1. Respondent SHALL NOT represent that goods or services have a sponsorship, approval, characteristics, ingredients, uses, benefits or qualities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have as prohibited by the *Consumer Protection Law* at 73 P.S. § 201-2(4)(v); and

2. Respondent SHALL NOT engage in other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding as prohibited by the *Consumer Protection Law* at 73 P.S. § 201-2(4)(xxi).

73 P.S. §§ 201-3 and 201-2(4)(v) and(xxi).

B. Respondent SHALL NOT, in the future, engage in conduct which violates the *Price Gouging Law* and any future amendments thereto, including, but not limited to, selling or offering to sell the goods or services within the geographic region that is the subject of the declared emergency for an amount which represents an unconscionably excessive price as prohibited by the *Price Gouging Law* at 73 P.S. § 232.4(a).

C. Respondent SHALL fully comply with any and all provisions of the *Consumer Protection Law*, including any amendments thereto, and is permanently enjoined from any violation thereof.

D. Respondent SHALL fully comply with any and all provisions of the *Price Gouging Law*, including any amendments thereto, and is permanently enjoined from any violation thereof.

III. Monetary Relief

A. Respondent hereby agrees to pay the amount of Five Thousand Sixty-Seven and 55/100 Dollars (\$5,767.55) (hereinafter “Monetary Payment”) to the Commonwealth of Pennsylvania, Office of Attorney General, to be allocated as follows:

1. **Public Protection and Education Purposes** - The sum of One Hundred Twenty-Seven and 00/100 Dollars (\$127.00) (“Costs”) to be distributed to the Commonwealth of Pennsylvania, Office of Attorney General, to be deposited in an interest-bearing account from which both principal and interest shall be expended for public protection and education purposes.

2. **Restitution** – The sum of Five Thousand Six Hundred Forty and 55/100 Dollars (\$5,640.55) (“Restitution”) shall be allocated as Restitution and distributed to affected consumers in accordance with subparagraph III(D) below.

B. **Suspended Civil Penalties** – The sum of Twenty-Four Thousand Two Hundred Fifty and 00/100 Dollars (\$24,250.00) as Civil Penalties (“Civil Penalties”) shall be suspended and shall not become due and payable by Respondent to the Commonwealth unless and until a court determines that Respondent has engaged in acts or practices that violate any of the terms of this Assurance of Voluntary Compliance.

1. Should the Civil Penalties be found to be due and payable by a court, the payment shall become immediately due and owing by Respondent.

2. Respondent acknowledges that the requirement to pay the Civil Penalties, resulting from a violation of any of the terms of this Assurance of Voluntary Compliance, shall be in addition to, and not in lieu of, any other sanctions that may be imposed under Section 201-8 of the Consumer Protection Law or any other applicable statute or rule of law. 73 P.S.

3. If a court of competent jurisdiction does not find that Respondent has engaged in conduct in violation of the *Consumer Protection Law* and/or the *Price Gouging Law* at any time within ten (10) years after the filing date of this Assurance of Voluntary Compliance, the suspended Civil Penalties set forth herein above shall expire and the Commonwealth will no longer be able to petition the Court for payment of such Civil Penalties.

C. **Payment Terms-** Respondent agrees to pay the above-referenced amounts toward Costs and Restitution in accordance with the terms of Paragraph III(A) herein, by certified check, cashier’s check, or money order, made payable to the “Commonwealth of Pennsylvania, Office of Attorney General,” and forwarded to the Office of Attorney General, 1600 Arch Street, Suite

300, Philadelphia, Pennsylvania 19103, upon Respondent's execution of the Assurance of Voluntary Compliance.

D. Restitution Terms

1. Consistent with Section 201-4.1 of the *Consumer Protection Law*, any consumer who submits a claim to the Commonwealth within sixty (60) days of the Effective Date of this Assurance of Voluntary Compliance, and who provides adequate documentation which supports his or her claim and/or complaint in the form of a receipt showing purchase of N95 face masks from Respondent between March 6, 2020 and the Effective Date of this Assurance of Voluntary Compliance, shall be eligible for restitution.

2. Any claim submitted by a consumer that is postmarked by the sixtieth (60th) day after the Effective Date of the Assurance of Voluntary Compliance shall be deemed timely.

3. The determination of whether a consumer shall receive Restitution hereunder, the determination of the amount of any such Restitution paid to such consumer, and the manner of payment shall be within the sole discretion of the Commonwealth.

4. If the amount of money allocated as Restitution exceeds the amount of consumer claims, the remaining Restitution money, after all consumer complainants have been reimbursed, shall be distributed to the Commonwealth of Pennsylvania, Office of Attorney General, in recognition of the costs incurred in pursuing this enforcement action, and shall be deposited into an interest-bearing account from which both principal and interest shall be expended for public protection and education purposes.

5. If the amount of consumer claims exceeds the amount allocated as Restitution, each eligible consumer shall receive a *pro rata* share of the Restitution proceeds.

IV. Miscellaneous Terms

A. Time shall be of the essence with regards to Respondent's obligations hereunder.

B. Respondent certifies that Jennifer L. Evans, President of American Surgical Supply, Inc. d/b/a American Surgical Supply, is authorized to enter into this Assurance of Voluntary Compliance on behalf of Respondent and his signature on this document binds the Respondent to all terms contained herein.

C. Respondent further agrees to execute and deliver all authorizations, documents and instruments which are necessary to carry out the terms and conditions of this Assurance of Voluntary Compliance, whether required prior to, contemporaneous with or subsequent to the execution of this Assurance of Voluntary Compliance.

D. The Court of Common Pleas of Schuylkill County, Pennsylvania shall have jurisdiction over the subject matter of this Assurance of Voluntary Compliance and over Respondent for purposes of enforcement of this Assurance of Voluntary Compliance, violation of which shall be deemed a violation of an injunction issued pursuant to Section 201-4 of the Consumer Protection Law, so that a violation of this Assurance of Voluntary Compliance shall provide a jurisdictional basis for the Attorney General of this Commonwealth to request the Court to impose penalties as provided in the Consumer Protection Law and any other equitable relief which the Court deems necessary or proper.

E. Nothing contained herein shall be construed to waive any individual right of action by any consumer, person or entity, or any local, state, federal or other governmental entity.

F. Any failure of the Commonwealth to exercise any of its rights under this Assurance of Voluntary Compliance shall not constitute a waiver of its rights hereunder.

G. If any clause, provision or section of this Assurance of Voluntary Compliance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance of Voluntary Compliance and the Assurance of Voluntary Compliance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

H. This Assurance of Voluntary Compliance may be executed in any number of counterparts and by different signatories on separate counterparts, each of which shall constitute an original counterpart hereof and all of which together shall constitute one and the same document. One or more counterparts of this Assurance of Voluntary Compliance may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart hereof.

I. Respondent understands and agrees that if its officers and/or agents have made any false statements in or related to this Assurance of Voluntary Compliance, that such statement is made pursuant to and under penalty of 18 P.S. § 4904 relating to unsworn falsifications to authorities.

J. Respondent shall not represent or imply that the Commonwealth acquiesces in, or approves of, Respondent's past or current business practices, efforts to improve its practices, or any future practices that Respondent may adopt or consider adopting.

K. This Assurance of Voluntary Compliance sets forth all of the promises, covenants, agreements, conditions and understandings between the parties, and supersedes all prior and contemporaneous agreements, understandings, inducements or conditions, express or implied. There are no representations, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Assurance of Voluntary Compliance that are not fully expressed herein or attached hereto. Each party specifically warrants that this Assurance of Voluntary Compliance is executed without reliance upon any statement or representation by any other party hereto, except as expressly stated herein.

WHEREFORE, Respondent agrees by the signing of this Assurance of Voluntary Compliance to abide by each and every one of the aforementioned provisions and that breach of any of the terms of this Assurance of Voluntary Compliance shall be sufficient warrant for the Commonwealth of Pennsylvania to petition the Court, to assess penalties including but not limited to civil and other penalties as provided for under Sections 201-8, 201-9 and 201-9.1 of the Consumer Protection Law, and to order any other relief which the Court deems necessary or proper in accordance with the Consumer Protection Law.

WITNESSETH, that the parties, intending to be legally bound, have hereto set their hands and seals:

{Signatures on following pages}

FOR THE PETITIONER:
COMMONWEALTH OF PENNSYLVANIA
JOSH SHAPIRO
Attorney General

Date: July 27, 2020

By:



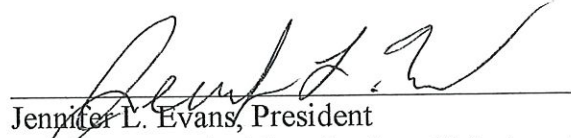
James S. Wise
Deputy Attorney General
Attorney ID # 314913
Pennsylvania Office of Attorney General
1600 Arch Street, Suite 300
Philadelphia, Pennsylvania 19103

FOR THE RESPONDENT:

American Surgical Supply, Inc. d/b/a American Surgical Supply

Date: 10-26-20

By



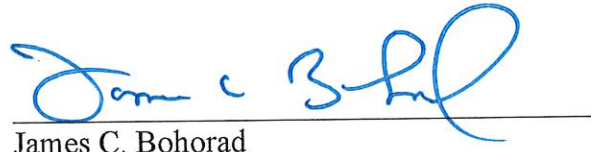
Jennifer L. Evans, President

American Surgical Supply, Inc. d/b/a American Surgical Supply

347 Pottsville-St. Clair Highway, Suite 2
Pottsville, Pennsylvania 17901

Date: July 17, 2020

By:



James C. Bohorad

Marshall, Bohorad, Thornburg, Price & Campion,
P.C.

1940 West Norwegian Street
PO BOX 1280

Pottsville, Pennsylvania 17901-7280

Attorney for the Respondent

CORPORATE RESOLUTION

**RESOLUTION OF THE BOARD OF DIRECTORS OF AMERICAN SURGICAL
SUPPLY, INC. D/B/A AMERICAN SURGICAL SUPPLY**

The Board of Directors of American Surgical Supply, Inc. d/b/a American Surgical Supply met on the 26th day of June, 2020, and approved the following resolution:

RESOLVED, that Jennifer L Evans, President of American Surgical Supply, Inc. d/b/a American Surgical Supply, is hereby authorized and empowered on behalf of American Surgical Supply, Inc. d/b/a American Surgical Supply to enter into an Assurance of Voluntary Compliance with the Commonwealth of Pennsylvania, Office of Attorney General, upon the terms and conditions contained in the proposed Assurance of Voluntary Compliance attached hereto and made a part hereof.

Filed with and attested to by the Secretary of the Corporation, this 26th day of June, 2020.


(Signature of Secretary)