FEDERAL TRADE COMMISSION
WASWINGTON, D.G. 20588

March 26, 1984

William C, Kopit, Esquire Epstein, Becker, Borsody and Green, P,C,

1140 19th Street, N,W,
Waskington, Dee, 28035

Re: Request for Staff Advisory Opinion, Kitsap Physicians Service

war MP, Kopltt

By letter of November 4, 1984, you have requested that the Federal Trade -mission staff issue an advisory opinion con-

cerning two practices proposed to be undertaken by your client, Kitsap P ysicians Service (hereinafter referred to as eKPSm or the

@Plane).I Specifically, you have asked;

(1) mether a nonprofit TPA-type ftE/10 which
is physician sponsored may include a

4

RPS is a joint venture of competing fee-foreservice physi- cians that operates an independent practice association-type health maintenance organization, Under the Comission- Enforce-

ment Policy with Respect to Physician Agreements to Control Medical Prepapent Plansn (Sept, 25, 1981) (hereinafter

mEnEoreement Policy Statement"), KBS" eexcLusion of new physicians in various specialties would constitute a concerted refusal to deal with competitors by the physicians controlling a "partially integrated planew Enforcement Policy Statement at 23-24, 27, On

its face, a concerted refusal to deal with new entrants by an organization of 95 per cent sf a market" participants is inherently suspect, requiring close antitrust scrutiny, Consis-tent with the Enforcement Policy Statement, we have analyzed the propsed conduct under the antitrust rule of reason, because inde-pendent evidence of a predominantly anticompetitive puspse is absent and the cxclusisn may plausibly be related to the effective operation sf the plan,

Using rule-of-reason analysis, we have attempted to assess
any likely anticompetitive effects of the policy in light of the nature of the restraint and the degree, if any, sf KPS% market pwer. IJnder the RPS propsal, non-member physicians in various specialties -- especially those considering entry, and new entrants in the KPS market area -- would be foreclosed from access

to patients covered by KPS, As noted above, these patients reportedly

patients to an Rapprspriatewratio will result in lower utiliza-tion and thus lower premiums, You explain that the Graduate Hedical Education ~ational, Advisory Comittee study ('GmNFnCm) indicates that 84 is the @appropriatem nmber of physicians, drawn from various specialties, for a cornunity of

patients would be well over

plans, There is, however, a striking difference between KPS and a health maintenance aeganization or other plan that is not prs-. vider-.csntrolled, that has always had a limited physician panel, or that has a much smaller market shame, Antitrust analysis of membership Limitations by such a group Is very likely to have quite different results with regard ts the