L'?\IIT%DSTATES OF AMERICA
FEDERAL TRADE COMMISSION a'~SI-lll\iGlON.D C 20580

Charles 6, Rosolio
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Suite 320, !Jottingham Centre
Towson, Maryland 21204

Bear Mr, Rosolio:

This better respn?s to your request far a staff advisory opinion concerning the legality under the laws enforced by the
Federal Trade Commission of the farmatian, marketing, and operation sf Marylan? EedicaP Eye Associates, PeA. (AP~TRm), a professional corporation, EmA is owned by wine shareholders,
all ophthalmologists, practicing in the Baltimore, Maryland
metropolitan area,

According to the materials accompanying your request, A
is a professional corporation formed for the purpose sf offering

@ cphthalmologic services to certain c'efined groups, specifically,

corporations, la3or unions, ane Realth Maintenance Organizations
("HMOs") in the Baltimore metroplitan area, -WEA will! jointly
market the services of its members an8 serve as a referral center

for consumers seeking ophtkalmologic services, A will market
itself as offering a full range of eye services at a variety of
locations throughout t5e Baltimore area,

The nine physician shareholders sf WSA make up five
seFarate medical practices loeat 5 in +ifferent areas throughout the Baltimore metropolitan area.' Six of the

You have in8icated that opht3almologists may compete in two separate product markets: medical and surgical eye care services offered only by ophthalmologists and those eye services offered by both ophthalmologists and optometrists. According to

statistics you provide?, there are approximately 105 ophthal- molsgktts and 3.00 optometrists in the Baltimore metrowlitan

area.' Basef on these figures. may

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It is anticipated that MEW patients will constitute a s

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percentage of each pkysicianPs total number of patients,

The p>ysician, as a consition of his participation, agregs lo maintain hospital privileges at an A-approve? hospital, perform all services in aecsrlance with proper medical practice

and rules of professional conduct, and comply with all b

Y Laws,

rules and regulations, policies, and directives sf m~. Physicians will be required to submit information to rn~ regarding services provide6 to MmA patients in the form

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distribute papents to each physician based on the services performed, A percentage of the fee due the physicians is withheld by FmW to cover the expenses of operation, W will offer its services to corporat s at a percentage discount off its physicians' normal fees. A will offer certain- services, such as eye examinations and e lasses, on a capitation basis, nder the capitation program, purchasers will pay a fixed fee to A in exchange for mEA*s omise to provide the covered eye vices whenever needed, A will also enter into contracts with HMOs, Physicians electing to participate in RPriBs will be compensated for services rendered to HEulg patients in accordance with a fee schedule to be adopted, The fee sckeeenle will be determined by a committee made up sf shareholders of =A and representatives sf the ME38, Physicians participating in Bm programs also agree ta a patient hold-harmless provision with
respect to any physician services determined by the HMO
utilization committee not to be medically necessary,

The law governing the propsed conduct is not entirely
clear, Nowever, Sase? on our reading of the Paw, as well as our consideration of the types of anticompeti tive eonduct that

@ warrant Commission action, we are of the opinion that the

formation, marketing, and operation of WEAr as prowsed, is not likely to warrant challenge as a violation

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physicians was not necessary to the achievement of the purported goals of the foundations, I?, at 352-54, 356.

venture required some horizontal restraint, In that ease, the

Court considered the legality of restrictions on psiee and output of televised college football games, found that the marketing and
sale of league sprts inherently required some k0rizontaP agreement among competitors, and determined tkat rule-sf-reason analysis was appropriate to consider the legality of particular

restraints, The Court found, however, that the challenged restraints on price and output were not integral to the

legitimate and procompetitive goals of the NCAA in offering
televised college football, Under the rule of reason, the Court
rejecte2 petitionera' profferee justifications and found the
restraints illegal, While recognizing that a joint selling

arrangement may "makle] possible a new product by reaping otherwise unattainable efficiencies," the Court found that the
NCCA had failed to demonstrate such efficiencies. NCAA, 468 U.S.
at 1131 quoting 457 P4Msh 401.5195 Tc 13 7 12t2.75 331.1993 424.7 335. d�(such3.099 Tc 1.7servj�11.5 0 0 12.113.125 444. peti

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physician members receive less reimbursement, Each physician thus has an incentive to hold down utilization of their own services as well as those of the other members, Thus, there appears to be substantial risk sharing with respect to sarvices offered under the capitation program,

The physicians in A will be reimbursed for other eye services on the basis of a fee schedule or on the basis sf their
actual charges minus a discount determined by A* Although there is less integration with respect to the services not

offered under the capitation program, this aspect of the program grapriate for rule of reason analysis, As stated
treatment is not appropriate where the setting of
illary and reasonably related to a joint venture or
new product,

The ,WEB physician shareholders appear to be creating a legitimate joint venture rather than engaging in naked
restraints, lVeVlEA will market itself as offering a full range of

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competition msng the participants, this appears to be more than

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The Board also may classify or reclassify any unissued shares by fixing or altering them in such respects as voting powers and

dividends* The csqorate chartar also provides that there may be no Less than four (4) stscMslders,

The total n e of shares of capital stock which is authorized to be issued is One Hundred Thousand (100,000) shares of

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