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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of	)	
PIEDMONT HEALTH ALLIANCE, INC., a corporation,	)	**Docket No. 9314**
and	)	
PETER H. BRADSHAW, M.D., S. ANDREWS DEEKENS, M.D., DANIEL C. DILLON, M.D., SANFORD D. GUTTLER, M.D., DAVID L. HARVEY, M.D., JOHN W. KESSEL, M.D., A. GREGORY ROSENFELD, M.D., JAMES R. THOMPSON, M.D., ROBERT A. YAPUNDICH, M.D., and WILLIAM LEE YOUNG III, M.D., individually.	)	

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that Piedmont Health Alliance, Inc. ("PHA"), Peter H. Bradshaw, M.D., S. Andrews Deekens, M.D., Daniel C. Dillon, M.D., Sanford D. Guttler, M.D., David L. Harvey, M.D., John W. Kessel, M.D., A. Gregory Rosenfeld, M.D., James R. Thompson, M.D., Robert A. Yapundich, M.D., and William Lee Young III, M.D., herein collectively referred to as "Respondents," have violated Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges in that respect as follows:

NATURE OF THE CASE

1. This action concerns a horizontal agreement among approximately 450 physician shareholders and non-shareholder subcontracted physicians (collectively, "physician members") of PHA to agree collectively on the prices they demand for physician services from payors, including health insurance plans, health maintenance organizations, preferred provider

organizations, employers directly providing self-funded health care benefits to their employees and their employees' dependents, and other third-party purchasers of health care benefits. The physicians, with and through PHA, have eliminated price competition to the detriment of payors and consumers in the "Unifour area" of North Carolina, which comprises Alexander, Burke, Caldwell, and Catawba Counties.

RESPONDENTS

2. PHA, a physician-hospital organization ("PHO"), is a for-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of North Carolina, with its principal address at 1899 Tate Boulevard, SE, Suite 2106, Hickory, North Carolina 28602.

3. The following persons ("Physician Respondents") are physicians licensed to practice medicine in the State of North Carolina, and are shareholders in PHA. Their respective names, principal addresses, and roles in PHA are as follows:

A. Peter H. Bradshaw, M.D., Hickory Surgical Clinic, 415 North Center Street, Suite 102, Hickory, North Carolina 28601, has been a voting member of the PHA Board of Directors ("PHA Board");

B. S. Andrews Deekens, M.D., Morganton Family Medicine, PLLC, 115 Foothills Drive, Morganton, North Carolina 28628, has served on the PHA Board as Chairman, a voting member, and a non-voting advisory member;

C. Daniel C. Dillon, M.D., P.A., 11 13th Avenue, NE, Suite 102, Hickory, North Carolina 28601, has served on the PHA Board as Chairman, a voting member, and a non-voting advisory member;

D. Sanford D. Guttler, M.D., Crown Health Care, PA, d/b/a Granite Falls Primary Care Physicians, One Trade Street, Granite Falls, North Carolina 28630, has been a voting member of the PHA Board, and has served both as the Chairman and as a member of the PHA Contracts Committee;

E. David L. Harvey, M.D., Piedmont Nephrology & Hypertension Associates, 1899 Tate Boulevard, SE, Suite 2101, Hickory, North Carolina 28602, has been a voting member of the PHA Board, and was a member of the PHA Contracts Committee;

F. John W. Kessel, M.D., Fairbrook Medical Clinic, 1985 Startown Road, Hickory, North Carolina 28602, has served both as a voting member and as a non-voting advisory member of the PHA Board;

G. A. Gregory Rosenfeld, M.D., Piedmont Neurosurgery, P.A., 1899 Tate Boulevard, SE, Suite 2108, Hickory, North Carolina 28602, has been a voting member of the PHA Board, and was a member of the PHA Contracts Committee;

14. In 1993, the Chief Executive Officer ("CEO") of Frye Regional Medical Center, Inc. ("Frye"), formulated a plan to create a PHO that would include Frye and physicians who practiced at Frye. Frye paid a health care consultant to conduct surveys of physicians practicing at Frye to determine their level of interest in forming a PHO, and the services they would expect the PHO to offer. The consultant told Frye that the surveyed physicians "stated a need to form the group to negotiate with group clout and power" and "maintain[] their income" in anticipation of the arrival of managed care organizations to the Unifour area.

15. Eight physicians practicing at Frye, including Physician Respondents Dillon and Guttler, were recruited to serve on a PHO "steering committee" with Frye's CEO and Chief Operating Officer ("COO"). This committee met periodically, for more than a year, to make decisions about the purpose, form, and organization of the PHO.

16. In 1994, PHA was incorporated and its shareholders elected a Board of Directors, made up of physician and hospital representatives from among the PHA membership. Frye's COO initially directed PHA's operations. In 1995, PHA hired a full-time CEO, who was charged with overseeing the day-to-day operations of PHA, subject to approval by the PHA Board.

17. In early 1995, representatives of PHA participated in discussions with Caldwell Memorial Hospital ("Caldwell Memorial"), Grace Hospital ("Grace"), and their medical staffs about the possibility of joining PHA to form a "super PHO." In 1996, PHA amended its Articles of Incorporation, Bylaws, and Policies and Procedures to permit Grace, Caldwell Memorial, and their respective medical staffs to join PHA and share equally in its governance.

RESPONDENTS HAVE ENGAGED IN PRICE-FIXING AND OTHER ANTICOMPETITIVE ACTS

18. According to its records, PHA was "created to be a contracting entity for its members and serves to negotiate managed health care contracts with [payors]." In 1994, PHA informed potential physician members that "[e]ach [payor] contract will be carefully reviewed to determine advantages and disadvantages (including but not limited to reimbursement issues) to Piedmont Health Alliance participants and only those [contracts] which the directors determine to be favorable on balance to our participants as a whole will be signed."

27. Competing physicians sometimes use a "messenger" to facilitate their contracting with payors in ways that do not constitute an unlawful agreement on prices and other competitively significant terms. Legitimate messenger arrangements can reduce contracting costs between payors and physicians. A messenger can be an efficient conduit to which a payor submits a contract offer, with the understanding that the messenger will transmit that offer to a group of physicians and inform the payor how many physicians across specialties accept the offer or have a counteroffer. At less cost, payors can thus discern physician willingness to contract at particular prices, and assemble networks, while physicians can market themselves to payors and assess contracting opportunities. A messenger may not negotiate prices or other competitively significant terms, however, and may not facilitate coordination among physicians on their responses to contract offers.

28. In February 2001, the PHA Board voted to change prospectively PHA's method of contracting with payors for physician services. PHA called its new contracting method the "modified messenger model." PHA told physician members that this contracting method would not apply to existing PHA payor contracts or to contracts then in the final stages of negotiation – all of which contained price and other terms that the PHA physician members had fixed and jointly demanded through PHA. Since the PHA Board's decision to institute its so-called "messenger" method for contracting, many existing PHA payor contracts renewed, and a number of new contracts were finalized, without being processed through PHA's messenger model.

29. In setting up this new contracting method, PHA told its physician members to report to PHA the minimum price levels they would accept under payor contracts. To aid physicians in making these price decisions, PHA informed them of the prices they had been paid for their most common medical procedures under several pre-existing, PHA-negotiated payor contracts. All such contracts contained prices that the physicians had collusively fixed and demanded through PHA. Many PHA physician members used these fixed prices to determine the prices that they would demand under the new "messenger" method.

30. PHA has processed two payor contracts for its physician members pursuant to its "messenger" method for contracting – one with CIGNA HealthCare of North Carolina, Inc. ("CIGNA"), and the other with United HealthCare of North Carolina, Inc. ("United"). PHA and its members engaged in price-fixing in connection with both contracts. PHA negotiated with CIGNA and United, respectively, on the overall average price levels that each would pay to all

would total the overall average price level that PHA had negotiated for all PHA physicians to receive under the contract. In effect, the overall average price level was the "pie" that the PHA physicians collectively would share, and the fee schedules were the "pieces of the pie" that individual physicians could earn – depending on their specialty and the procedures they

certain payors; (e) approving or rejecting fee schedules, reimbursement terms, price levels, or other proposals or analyses relating to fees to be paid to PHA's physician members for use by PHA in negotiating and contracting with payors; and (f) recommending that the PHA Board approve or adopt fee schedules for reimbursement of PHA physician members in contracts between PHA and payors.

RESPONDENTS' PRICE-FIXING IS NOT JUSTIFIED

36. PHA's collective negotiation of fees and other competitively significant contract terms has not been, and is not, reasonably necessary to achieving any efficiency-enhancing integration.

ANTICOMPETITIVE EFFECTS

37. Respondents' actions described in Paragraphs 14 through 35 of this Complaint have had, or have tended to have, the effect of restraining trade unreasonably and hindering competition in the provision of physician services in the Unifour area of North Carolina in the following ways, among others:

A. price and other forms of competition among PHA's physician members were unreasonably restrained;

B. prices for physician services in the Unifour area have increased or been maintained at artificially high levels; and

C. health plans, employers, and individual consumers were deprived of the benefits of competition among physicians.

VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

38. The combination, conspiracy, acts, and practices described above constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such combination, conspiracy, acts and practices, or the effects

NOTICE

Notice is hereby given to the Respondents that the twenty-second day of March, 2004, at 10:00 a.m., or such later date as determined by an Administrative Law Judge of the Federal Trade Commission, is hereby fixed as the time and Federal Trade Commission offices, 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580, as the place when and where a hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this Complaint, at which time and place you will have the right under the Federal Trade Commission Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the Complaint.

You are notified that the opportunity is afforded to you to file with the Commission an answer to this Complaint on or before the twentieth (20th) day after service of it upon you. An answer in which the allegations of the Complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the Complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the Complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the Complaint, the answer shall consist of a statement that you admit all of the material facts to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the Complaint and, together with the Complaint, will provide a record basis on which the Administrative Law Judge shall file an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings and conclusions under § 3.46 of the Commission's Rules of Practice for Adjudicative Proceedings and the right to appeal the initial decision to the Commission under § 3.52 of said Rules.

Failure to answer within the time above provided shall be deemed to constitute a waiver of your right to appear and contest the allegations of the Complaint and shall authorize the Administrative Law Judge, without further notice to you, to find the facts to be as alleged in the Complaint and to enter an initial decision containing such findings, appropriate conclusions, and order.

The Administrative Law Judge will schedule an initial prehearing scheduling conference to be held not later than 14 days after the last answer is filed by any party named as a Respondent in the Complaint. Unless otherwise directed by the Administrative Law Judge, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the prehearing scheduling conference, and Rule 3.31(b) obligates counsel for each party, within five (5) days of receiving a Respondent's answer, to make certain initial disclosures without awaiting a formal discovery request.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceeding in this matter that Respondents Piedmont Health Alliance, Inc. ("PHA"), Peter H. Bradshaw, M.D., S. Andrews Deekens, M.D., Dani

6. An order that PHA cease and desist, for a period of seven (7) years, from: (a) acting as a messenger, or as an intermediary or agent, for or on behalf of any physicians, with payors regarding contracts or terms of dealing involving the physicians and payors; (b) participating in, organizing, or facilitating any discussion or understanding with or among any physicians or hospitals, pursuant to a qualified risk-sharing joint arrangement or a qualified clinically-integrated joint arrangement, relating to price or other terms or conditions of dealing with any payor; and (c) contacting a payor, pursuant to a qualified risk-sharing joint arrangement or a qualified clinically-integrated joint arrangement, to negotiate or enter into any agreement relating to price or other terms or conditions of dealing with any payor, on behalf of any physician or hospital in such arrangement.

messenger, or as an agent on behalf of any physicians, with payors regarding contracts for physician services.

10. A requirement that PHA distribute a copy of the order and Complaint, within thirty (30) days after the order becomes final, to: (a) each physician who is participating, or has participated, in PHA; (b) each officer, director, manager, and employee of PHA; and (c) all payors with which PHA has been in contact since January 1, 1994, regarding contracting for the provision of physician or hospital services (including a notice to these payors of their right to terminate any of their existing contracts with PHA).

11. A requirement that for ten (10) years after the order becomes final, PHA: (a) distribute a copy of the order and Complaint to: (i) each payor that contracts with PHA for the provision of physician or hospital services; (ii) each person who becomes an officer, director, manager, or employee of PHA; and (iii) each newly participating physician in PHA; and (b) annually publish a copy of the order and Complaint in any official annual report or newsletter sent to all physicians who participate in it, and on its website, with such prominence and identification as is given to regularly featured articles.

12. Requirements that PHA and each Physician Respondent: (a) file periodic compliance reports with the Commission; and (b) notify the Commission of any changes that may affect compliance obligations.

13. Any other provision appropriate to correct or remedy the anticompetitive practices engaged in by PHA and the Physician Respondents.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-second day of December, 2003, issues its Complaint against Piedmont Health Alliance, Inc., Peter H. Bradshaw, M.D., S. Andrews Deekens, M.D., Daniel C. Dillon, M.D., Sanford D. Guttler, M.D., David L. Harvey, M.D., John W. Kessel, M.D., A. Gregory Rosenfeld, M.D., James R. Thompson, M.D., Robert A. Yapundich, M.D., and William Lee Young III, M.D.

By the Commission.

SEAL

Donald S. Clark
Secretary