

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

In the Matter of

PIEDMONT HEALTH ALLIANCE, INC.,  
a corporation,

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

Docket No. 9314

RESPONDENTS' RESPONSE IN OPPOSITION TO COMPLAINT COUNSEL'S  
MOTION TO COMPEL SIX PHYSICIAN RESPONDENTS TO APPEAR FOR  
DEPOSITION

Complaint Counsel: [REDACTED]      [REDACTED]      [REDACTED]      [REDACTED]      [REDACTED]

source. Complaint Counsel's conclusory statement that it has "new" information does not alone justify a second set of depositions in this case, particularly when the information sought relates to PHA's conduct as an organization and can be obtained from other sources.

*Second*, re-deposing the Six Physician Respondents would impose undue burden and expense on the Physician Respondents and their patients, which is not likely to be outweighed by any putative value the depositions may generate. On balance, the time, expense, and resources required for a second deposition constitute an unreasonable burden. Consequently re-deposing

the Six Physician Respondents would be an unreasonable burden on the Respondents.

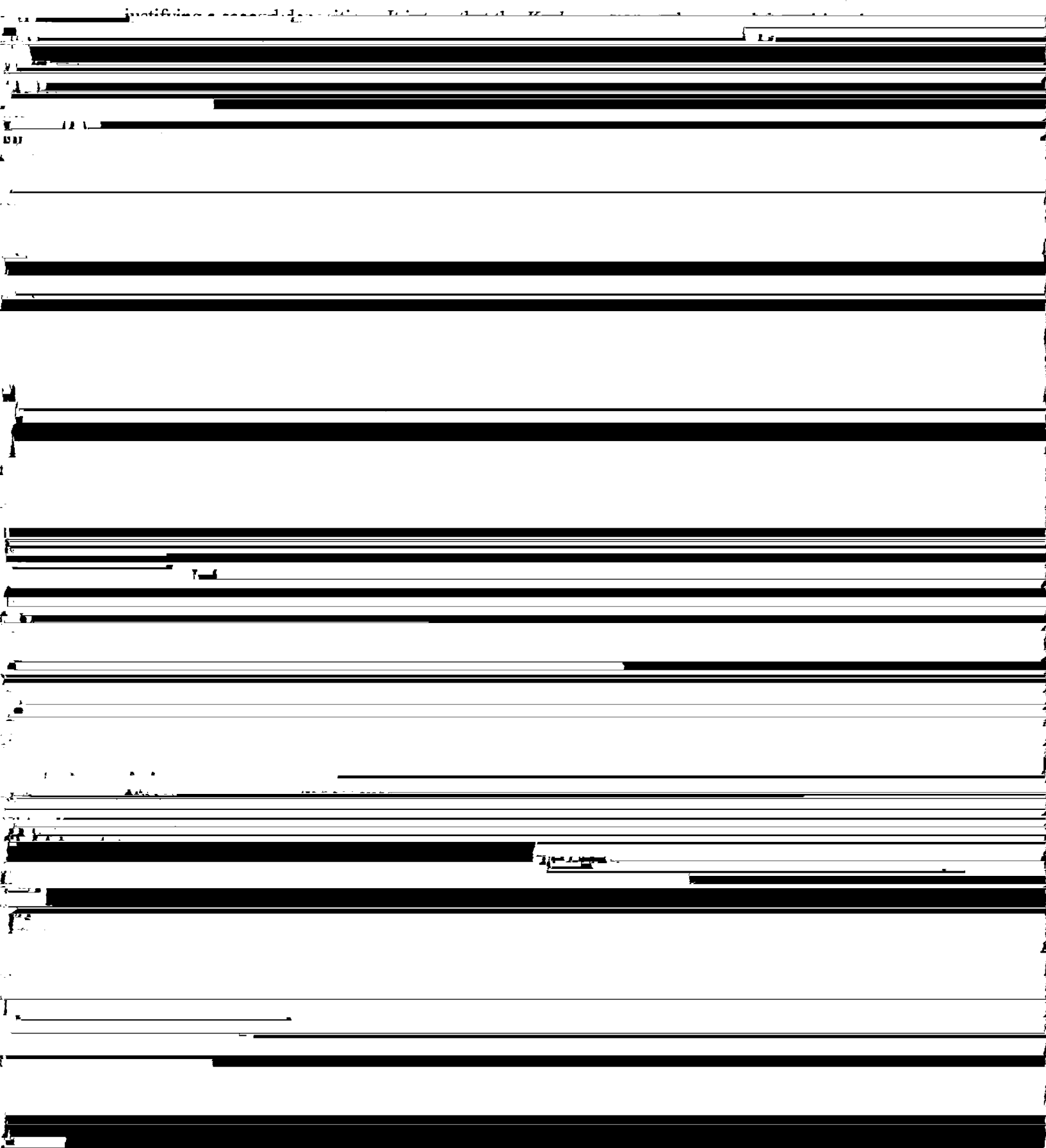
**Nevertheless**, if Your Honor grants Complaint Counsel's motion, Respondents

second denposition of these physicians would impose a significant burden on the public. [REDACTED]

The Supreme Court of the United States has stated that "EPA's clean Air Act [REDACTED]



expected from discovery in any event. Complaint Counsel relies on *Keck v. Union Bank of Switzerland* for the proposition that “new evidence” provides the basis for new questions,



Paragraphs 15, 20, and 35 make specific allegations about specific Physician Respondents' committee membership, to which the specific Physician Respondents have admitted their committee membership. See Answer ¶¶ 15, 20, 35 (Att. 1-3).

regarding the actions of the committee. ¶¶ 15, 20, 35 (Att. 1-3).

needs of the case, the amount in controversy, limitations on the party's resources, and the

importance of the issues at stake in the litigation." *Hammerman v. Peacock, et al.*, 108 F.R.D. 66, 67 (D.D.C. 1985) (emphasis added).

In the present case, regarding the Civil Division's Department of Justice, the

Counsel Motion to Compel, at 7-8.

Complaint Counsel suggests that Your Honor's orders in *Schering* and *Hoechst* addressed issues "identical" to the issues at bar. *Id.* at 4. However, when determining the burden of additional discovery, it is misleading to suggest that the burden of an additional deposition on a company with thousands of employees and billions of dollars in annual revenue is equivalent to the burden that would be imposed on a small business. In contrast to Complaint Counsel's

account the needs of the case, the amount in controversy, **limitations on the party's resources,**

and the importance of the issues at stake in litigation." *Id.*



In the present case, compelling the Six Physician Defendants to be deposed for

time is unwarranted. As discussed above, the information sought by Complaint Counsel is not  
unique to the Six Physician Defendants and would be available to the public through the

1987) (limiting second deposition because there was “no logical reason why [the deposing party] should duplicate the same material covered at the first deposition.”).

In the present case, granting a protective order will relieve the burdens that the second round of depositions will impose on the Six Physician Respondents, their practices, and their

promote efficiency and reduce the costs of the litigation, both of which are critical in this case.

### III. Conclusion

For the foregoing reasons, Respondents respectfully request that this court issue

# **Attachment 1**

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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 patients.

voting member of the PHA Board, and was a member of the PHA Contracts Committee;

- H. James R. Thompson, M.D., Caldwell Family Care Center, 212 Mulberry Street, SW, Lenoir, North Carolina 28645, has served both as the

9. To become members of payors' provider networks, physicians often enter into contracts with payors that establish the terms and conditions, including fees and other competitively significant terms, for providing health care services to enrollees under the payors' programs. Physicians entering into such contracts often agree to reductions in their usual compensation in order to obtain access to additional patients made available to them by the





with payors on behalf of PHA and its members. Until 2001, the Contracts Committee met regularly and was actively involved in PHA's contracting activities. Physician Respondents Guttler, Harvey, Rosenfeld, and Yapundich participated in the activities of the Contracts Committee during this period. Over that period, PHA negotiated and entered into contracts with payors on behalf of PHA and its members. Until 2001, the Contracts Committee met regularly and was actively involved in PHA's contracting activities. Physician Respondents Guttler, Harvey, Rosenfeld, and Yapundich participated in the activities of the Contracts Committee during this period. Over that period, PHA negotiated and entered into contracts with payors on behalf of PHA and its members.

payor contracts.

21. From 1994 through early 1996, Frye's Chief Financial Officer ("CFO") and COO served as PHA's principal contract negotiators with payors. Beginning in 1996, PHA's CEO and her staff assumed the responsibility for negotiating PHA's payor contracts, and PHA's Board and Contracts Committee advised PHA's CEO regarding the price and other contract terms to demand from payors.

22. PHA's Board must approve PHA contracts with payors before they can take effect. PHA's Board is composed of 14 physician directors and six hospital directors, two representing each hospital (but with only one seat on the Board for each hospital).

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

costs between payors and physicians. A messenger can be an efficient conduit to which payors



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

**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

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

[The remainder of the page is obscured by heavy black redaction bars.]

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 agent; (b) [REDACTED]

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)

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



# **Attachment 2**

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

**In the Matter of**

**PIEDMONT HEALTH ALLIANCE, INC.,  
a corporation,**

**and**

**PETER H. BRADSHAW, M.D.,  
S. ANDREWS DEEKENS, M.D.,  
DANIEL C. DILLON, M.D.,  
SANFORD D. GUYTON, M.D.**

**Docket No. 9314**

follows:<sup>1</sup>

1. Respondents deny each and every allegation of Paragraph 1 of the Complaint

3. Admitted, except that the zip code for Dr. Deekens is 28655.

4. Respondents admit that PHA has facilitated contracting between its members and

allegation.

12. Respondents lack knowledge and information sufficient to form a belief as to the truth of the allegations of the East...

allegation.

13. Respondents lack knowledge and information sufficient to form a belief as to the truth of the allegations of the East...

16. Respondents PHA, Dillon, Guttler, Harvey, Kessel, Rosenfeld and Young admit that in 1994, PHA was incorporated and its shareholders elected a Board of Directors composed

of physician and hospital representatives from the PHA membership. These same Respondents admit that in late fall of 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. All remaining

Respondents lack knowledge and information sufficient to form a belief that the PHA

20. Respondents PHA, Dillon, Guttler, Harvey, Rosenfeld and Young admit that PHA established a Contracts Committee in 1994, which reviewed payor contracts. All remaining Respondents lack knowledge and information sufficient to form a belief as to the truth of these

allegations and on that basis deny each such allegation. All Respondents admit that the

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

directors and two of the three hospital shareholders is required for actions requiring a super-majority vote under PHA's bylaws. Respondents deny each and every remaining allegation of Paragraph 22 of the Complaint.

23. Respondents admit that PHA hired contractors for multiple services.

development of certain physician fee schedules. Respondents deny each and every remaining allegation of Paragraph 23 of the Complaint.

24. Respondents admit that many PHA payor contracts have been single-signature contracts covering the services of most of its physician members. Respondents deny each and every remaining allegation of Paragraph 24 of the Complaint.

25. Respondents admit that PHA's physician participation agreements originally had a provision that individual providers generally did not negotiate with payors at the same time PHA was communicating with the same payors on their behalf. This provision was removed in 2001. Respondents deny each and every remaining allegation of Paragraph 25 of the Complaint.

26. Respondents admit that certain PHA payor contracts had exclusivity provisions. Respondents deny each and every remaining allegation of Paragraph 26 of the Complaint.

27. Respondents admit that competing physicians may lawfully use a "messenger

28. Respondents admit that in February 2001, PHA's Board voted to adopt a "modified messenger model" that applied prospectively to PHA's method of contracting with

networks for physician services. D

Paragraph 28 of the Complaint.

29. Respondents admit that PHA's ...





Dated: January 20, 2004

Respectfully submitted,

By: 

**James H. Sneed**

**Nicholas R. Koberstein**

**Linda M. Holleran**

**McDERMOTT, WILL & EMERY**

600 Thirteenth Street N.W.

Washington, D.C. 20002

Tel: (202) 756-8000

Fax: (202) 756-8855

Email: Jsneed@mwe.com;

NKoberstein@mwe.com;

ATTORNEYS FOR RESPONDENTS

**CERTIFICATE OF SERVICE**

I, Linda M. Holleran, hereby certify that on January 20, 2004:

I caused two copies of Answer of Respondents Piedmont Health Alliance, Inc., et al., to Complaint of Federal Trade Commission, to be served by hand delivery upon the following person:

Hon. D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
Room H-104  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

I caused two copies of Answer of Respondents Piedmont Health Alliance, Inc., et al., to Complaint of Federal Trade Commission, to be served by electronic delivery and by hand delivery upon the following:

Office of the Secretary  
Federal Trade Commission  
Room H-159  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

I caused a copy of Answer of Respondents Piedmont Health Alliance, Inc., et al., to Complaint of Federal Trade Commission to be served via facsimile transmission and followed

I caused a copy of Answer of Respondents Piedmont Health Alliance, Inc., et al.,  
to Complaint of Federal Trade Commission to be served via facsimile transmission and followed  
by U.S. mail delivery to the following person:

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Jeffrey Brennan, Esq.  
Assistant Director Health Care Services & Products  
Bureau of Competition  
Federal Trade Commission  
601 New Jersey Avenue, N.W.  
Washington, D.C. 20580

  
Linda M. Holleran

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CERTIFICATE OF SERVICE

I, Andrea L. Hamilton, hereby certify that on March 25, 2004:

I caused two copies of Respondents' Response In Opposition To Complaint Counsel's Motion To Compel Six Physician Respondents To Appear For Deposition, to be served by hand delivery upon the following person:

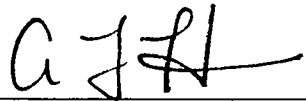
Hon. D. Michael Channell

Federal Trade Commission  
Room H-104  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

I caused two copies of Respondents' Response In Opposition To Complaint

I caused a copy of Respondents' Reply Memorandum In Opposition Of  
Complaint Counsel's Motion To Compel Six Physician Respondents To Appear For Deposition,  
to be served via U.S. mail delivery to the following person:

Jeffrey Brennan, Esq.  
Assistant Director Health Care Services & Products  
Bureau of Competition  
Federal Trade Commission  
601 New Jersey Avenue, N.W.  
Washington, D.C. 20580

  
\_\_\_\_\_  
Andrea L. Hamilton