

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

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
 Orson Swindle
 Thomas B. Leary
 Pamela Jones Harbour
 Jon Leibowitz

) In the Matter of)	
) PIEDMONT HEALTH ALLIANCE, INC.,)	Docket No. 9314
) a corporation, et al.)	
) _____)	

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission (“Commission”), having heretofore issued its Complaint charging Piedmont Health Alliance, Inc. (“PHA”), hereinafter sometimes referred to as “Respondent PHA,” and ten individual physicians (“Physician Respondents”), together collectively hereinafter sometimes referred to as “Respondents,” with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order to Cease and Desist (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts and the facts admitted in the Respondents’ Answer to the Complaint, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25 (f) of the Commission’s Rules, 16 C.F.R. § 3.25 (f), and the Commission having considered the matter and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comment received from an interested person pursuant to section 2.34 of its Rules, now in further conformity with

the procedure described in Commission Rule 3.25 (f), 16 C.F.R. § 3.25 (f), the Commission makes the following jurisdictional findings and issues the following Order:

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Respondent PHA” means Piedmont Health Alliance, Inc., its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- B. “Physician Respondents” means 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.
- C. “Respondents” means Respondent PHA and the Physician Respondents.
- D. “Group practice” means a bona fide, integrated firm in which providers practice together as partners, shareholders, owners, members, or employees, or in which only one provider practices.
- E. “Hospital” means a health care facility licensed by any state as a hospital.
- F. “Limited Messenger Arrangement” means an arrangement pursuant to which PHA receives a contract offer from a payor, timely conveys without comment or analysis such offer to some or all of the arrangement’s participants as directed by the payor, receives from each participant his or her independent, unilateral decision to accept or reject the payor’s contract offer, and timely conveys each such response without comment or analysis to the payor.
- G. “Messenger Arrangement” means an arrangement, excluding a Limited Messenger Arrangement, pursuant to which Respondent PHA acts as a messenger, or as an agent for or on behalf of a provider, with payors regarding contracts or terms of dealing involving the providers and payors.
- H. “Participate” in an entity means (1) to be a partner, shareholder, owner, member, or employee of such entity, or (2) to provide services, agree to provide services, or offer to provide services, to a payor through such entity. This definition applies to all tenses and

forms of the word “participate,” including, but not limited to, “participating,” “participated,” and “participation.”

- I. “Payor” means any person that pays, or arranges for payment, for all or any part of any provider services or hospital services for itself or for any other person. Payor includes any person that develops, leases, or sells access to networks of providers or hospitals.
- J. “Person” means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.
- K. “Physician” means a doctor of allopathic medicine (“M.D.”) or a doctor of osteopathic medicine (“D.O.”).
- L. “Preexisting contract” means a contract that was in effect on the date of the receipt by a payor that is a party to such contract of notice sent by Respondent PHA, pursuant to Paragraph VII.A.4 of this Order, of such payor’s right to terminate such contract.
- M. “Principal address” means either (1) primary business address, if there is a business address, or (2) primary residential address, if there is no business address.
- N. “Provider” means any licensed health care professional, including, but not limited to, physicians.
- O. “Qualified clinically-integrated joint arrangement” means an arrangement to provide provider services, hospital services, or both provider and hospital services, in which:
 - 1. all providers and hospitals that participate in the arrangement participate in active and ongoing programs of the arrangement to evaluate and modify the practice patterns of, and create a high degree of interdependence and cooperation among, the providers and hospitals that participate in the arrangement, in order to control costs and ensure the quality of services provided through the arrangement; and
 - 2. any agreement concerning price or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies through the arrangement.
- P. “Qualified risk-sharing joint arrangement” means an arrangement to provide provider services, hospital services, or both provider and hospital services, in which:
 - 1. all providers and hospitals that participate in the arrangement share substantial financial risk through their participation in the arrangement and thereby create incentives for the providers and hospitals that participate jointly to control costs

and improve quality by managing the provision of provider services and hospital services, such as risk-sharing involving:

- a. the provision of provider services and hospital services to payors at a capitated rate,
 - b. the provision of provider services and hospital services for a predetermined percentage of premium or revenue from payors,
 - c. the use of significant financial incentives (*e.g.*, substantial withholds) for providers and hospitals that participate to achieve, as a group, specified cost-containment goals, or
 - d. the provision of a complex or extended course of treatment that requires the substantial coordination of care by hospitals and providers in different specialties offering a complementary mix of services, for a fixed, predetermined price, where the costs of that course of treatment for any individual patient can vary greatly due to the individual patient's condition, the choice, complexity, or length of treatment, or other factors; and
2. any agreement concerning price or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies through the arrangement.

Q. "Unifour Area" means the area of North Carolina that comprises Alexander, Burke, Caldwell, and Catawba Counties.

II.

IT IS FURTHER ORDERED that each Respondent, directly or indirectly, or through any corporate or other device, in connection with the provision of provider services in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, cease and desist from:

- A. Entering into, adhering to, participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding between or among any providers:
 1. to negotiate on behalf of any provider with any payor;
 2. to deal, refuse to deal, or threaten to refuse to deal with any payor;

3. regarding any term, condition, or requirement upon which any provider deals, or is willing to deal, with any payor, including, but not limited to, price terms; or
 4. not to deal individually with any payor, or not to deal with any payor through any arrangement other than Respondent PHA;
- B. Exchanging or facilitating in any manner the exchange or transfer of information between or among providers concerning any provider's willingness to deal with a payor, or the terms or conditions, including any price terms, on which the provider is willing to deal with a payor;
- C. Attempting to engage in any action prohibited by Paragraphs II.A and II.B above; and
- D. Encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any person to engage in any action that would be prohibited by Paragraphs II.A through II.C above.

PROVIDED HOWEVER,

provided further that, if Respondent PHA forms an exclusive qualified joint arrangement pursuant to proviso 3 of Paragraph II of this Order, and if any provider specialty has fewer than five providers in that provider specialty, then that exclusive qualified joint arrangement may include one group practice that includes one or more providers in that specialty, on a non-exclusive basis; or

- A. Preparing, maintaining, or participating in the development or preparation of any provider fee schedule;
- B. Collecting, soliciting, maintaining, or otherwise accumulating any information relating to the terms, conditions, or requirements upon which any provider deals, or is willing to deal, with a payor, including, but not limited to, price terms;
- C. Preparing or maintaining any summary or other compilation relating to the terms, conditions, or requirements upon which any provider deals, or is willing to deal, with a payor, including, but not limited to, price terms; and
- D. Encouraging, facilitating, suggesting, advising, pressuring, inducing, or attempting to induce any person to engage in any action that would be prohibited by Paragraphs III.A through III.C above, if Respondent PHA were to engage in such action.

PROVIDED, HOWEVER, that Paragraph III of this Order shall not apply, to the extent such conduct is reasonably necessary:

1. for Respondent PHA to continue the bonus plan contracts with payors listed in

- A. Participating in, organizing, or facilitating any discussion or understanding with or among any providers in such Arrangement relating to price or other terms or conditions of dealing with any payor; or
- B. Contacting a payor, pursuant to an 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 provider in such Arrangement;

PROVIDED, HOWEVER, that Notification shall not be required for subsequent contacts with any payor pursuant to any Arrangement for which Notification has been given pursuant to Paragraph IV.A or Paragraph IV.B of this Order;

PROVIDED FURTHER:

- 1. that with respect to any Notification, Respondent PHA shall include the following information:
 - a. for each provider participant, the name, address, telephone number, medical or other provider specialty, group practice, if applicable, and the name of each hospital where the provider has privileges;
 - b. a description of the Arrangement and its purpose, function, and geographic area of operation;
 - c. a description of the nature and extent of the integration and the efficiencies resulting from the Arrangement;
 - d. an explanation of how any agreement on prices, or on contract terms related to price, furthers the integration and achievement of the efficiencies resulting from the Arrangement;
 - e. a description of any procedures proposed to be implemented to limit possible anticompetitive effects resulting from the Arrangement or its activities; and
 - f. all studies, analyses, and reports that were prepared for the purpose of evaluating or analyzing competition for provider services in the Unifour Area or specifically in Catawba County, North Carolina, including, but not limited to, the market share of provider services in such market(s); and
- 2. if, within sixty (60) days from the Commission's receipt of the Notification, a representative of the Commission makes a written request for additional

information to the Respondent PHA, then Respondent PHA shall not engage in any conduct described in Paragraph IV.A. or Paragraph IV.B of this Order prior to the expiration of thirty (30) days after substantially complying with such request for additional information, or such shorter waiting period as may be granted in writing from the Bureau of Competition. The expiration of any waiting period described herein without a request for additional information or without the initiation of an enforcement proceeding shall not be construed as a determination by the Commission, or its staff, that a violation of the law, or of this Order, may not have occurred. Further, receipt by the Commission from Respondent PHA of any Notification, pursuant to Paragraph IV of this Order, is not to be construed as a determination by the Commission that any such Arrangement does or does not violate this Order or any law enforced by the Commission.

V.

IT IS FURTHER ORDERED that Respondent PHA, directly or indirectly, or through any corporate or other device, cease and desist:

- A. for thirty (30) months after the date that this Order becomes final from entering into any Limited Messenger Arrangement; and
- B. for fifty-four (54) months after the date that this Order becomes final, from:
 - 1. evaluating, advising, or giving any opinion relating to contracts or terms of dealing involving providers and payors; or
 - 2. entering into any Messenger Arrangement.

PROVIDED, HOWEVER, that, subject to the provisions of Paragraph VI of this Order, nothing in Paragraph V of this Order shall prohibit Respondent PHA from entering into a Limited Messenger Arrangement on behalf of providers with regard to direct employer contracts with payors listed in Confidential Appendix B of this Order.

VI.

IT IS FURTHER ORDERED that, for three (3) years after the date that Respondent PHA enters into any Messenger Arrangement or Limited Messenger Arrangement pursuant to Paragraph V of this Order, Respondent PHA shall notify the Secretary of the Commission in writing (“Messenger Notification”) at least sixty (60) days, but no more than ninety (90) days, prior to entering into any such arrangement. The Messenger Notification shall include the identity of each proposed provider participant; the proposed geographic area in which the

proposed arrangement will operate; a copy of any proposed provider participation agreement; a description of the proposed arrangement's purpose and function; a description of any resulting efficiencies expected to be obtained through the arrangement; and a description of the procedures to be implemented to limit possible anticompetitive effects. Messenger Notification is not required for Respondent PHA's subsequent acts pursuant to any Messenger Arrangement or Limited Messenger Arrangement for which this Messenger Notification has been given. Receipt by the Commission from Respondent PHA of any Messenger Notification, pursuant to Paragraph VI of the Order, is not to be construed as a determination by the Commission that any action described in such Messenger Notification does or does not violate this Order or any law enforced by the Commission.

VII.

IT IS FURTHER ORDERED that Respondent PHA shall:

- A. Within thirty (30) days after the date on which this Order becomes final, send a copy of this Order and the Complaint by first-class mail:
 1. with delivery confirmation, to each provider and hospital that participates in Respondent PHA;
 2. with return receipt requested, to each present officer, director, manager, and employee of Respondent PHA;
 3. with return receipt requested, to the chief executive officer of each payor with which Respondent PHA has no current contract, but with which Respondent PHA has a record of being in contact, since January 1, 1997, regarding contracting for the provision of provider services; and
 4. with delivery confirmation, and with an enclosed copy of the notice specified in:
 - a. Appendix C to this Order, to the chief executive officer of each payor with which Respondent PHA has a contract for the provision of provider services;
 - b. Appendix C to this Order, to each payor with a direct employer contract, listed at Confidential Appendix B of this Order; and
 - c. Appendix D to this Order, to each payor with a bonus plan contract, listed at Confidential Appendix A of this Order;
- B. For a period of five (5) years after the date this Order becomes final:

- the
1. Distribute by first-class mail, return receipt requested, a copy of this Order and Complaint to:
 - a. each provider and hospital that begins participating in Respondent PHA, and that did not previously receive a copy of this Order and the Complaint from Respondent PHA, within thirty (30) days of the day that such participation begins;
 - b. each payor that contracts with Respondent PHA for the provision of provider services, and that did not previously receive a copy of this Order and the Complaint from Respondent PHA, within thirty (30) days of the day that such payor enters into such contract; and
 - c. each person who becomes an officer, director, manager, or employee of Respondent PHA, and who did not previously receive a copy of this Order and the Complaint from Respondent PHA, within thirty (30) days of the day that he or she assumes such responsibility with Respondent PHA; and
 2. Annually publish a copy of this Order and the Complaint in an official annual report or newsletter sent to all providers who participate in Respondent PHA, with such prominence as is given to regularly featured articles;
- C. File a verified written report within sixty (60) days after the date on which this Order becomes final, annually thereafter for five (5) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may by written notice require. Each such report shall include:
1. A detailed description of the manner and form in which Respondent PHA has complied and is complying with this Order;
 2. The name, address, and telephone number of each payor with which Respondent PHA has had any contact; and
 3. Copies of the delivery confirmations required by Paragraphs VII.A.1 and VII.A.4 of this Order, and copies of the signed return receipts required by Paragraphs VII.A.2, VII.A.3, and VII.B.1 of this Order; and
- D. Terminate, without penalty or charge, and in compliance with any applicable laws, any preexisting contract with any payor for the provision of provider services, at the earlier of: (1) receipt by Respondent PHA of a written request from a payor to terminate such contract, or (2) six (6) months after the day the Order becomes final; *provided, however*, that the automatic termination requirement of part (2) of Paragraph VII.D of this Order

does not apply to the bonus plan contracts entered into by Respondent PHA with payors listed in Confidential Appendix A of this Order; *provided further* that any payor holding a contract with Respondent PHA, other than a bonus plan contract entered into by Respondent PHA with payors listed in Confidential Appendix A of this Order, may, upon written request to Respondent PHA, extend the termination date of such contract for a period not to exceed six (6) months after the date this Order becomes final; *provided further* that any payor making such request to extend a contract retains the right, pursuant to part (1) of Paragraph VII.D of this Order, to terminate the contract at any time.

VIII.

IT IS FURTHER ORDERED that each Physician Respondent shall file a verified written report within sixty (60) days after the date on which this Order becomes final, annually thereafter for three (3) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may by written notice require. Each such report shall include a detailed description of the manner and form in which each Physician Respondent has complied and is complying with this Order. Such details shall include, but are not limited to, a description of any exclusive qualified joint arrangement or any qualified joint arrangement entered into by the Physician Respondent during the reporting period.

IX.

IT IS FURTHER ORDERED that Respondent PHA shall notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of Respondent PHA, (2) acquisition, merger or consolidation of Respondent PHA, or (3) other change in Respondent PHA that may affect compliance obligations arising out of the order, including but not limited to assignment, the creation or dissolution of subsidiaries, or any other change in Respondent PHA.

X.

IT IS FURTHER ORDERED that each Respondent shall notify the Commission of any change in his or its principal address within twenty (20) days of such change in address.

XI.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, each Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, calendars, and other records and

documents in his or its possession, or under his or its control, relating to any matter contained in this Order; and

- B. Upon five (5) days' notice, and in the presence of counsel, and without restraint or interference from it, to interview officers, directors, or employees of the Respondent.

XII.

IT IS FURTHER ORDERED that this Order shall terminate on October 1, 2024.

By the Commission, Commissioner Leibowitz not participating.

Donald S. Clark
Secretary

SEAL
ISSUED: October 1, 2004

Appendix A

[Redacted From Public Record Version But Incorporated By Reference]

Appendix B

[Redacted From Public Record Version But Incorporated By Reference]

Appendix C

Letter to payors with whom PHA currently has a contract, other than a bonus plan contract

[letterhead of Respondent PHA]

[name of payor's CEO]

[address]

Dear _____:

Enclosed is a copy of a complaint and a decision and order (“Order”) issued by the Federal Trade Commission against Piedmont Health Alliance, Inc. (“PHA”), and ten individual physicians.

Pursuant to Paragraph VII.D of the Order, PHA must allow you to terminate, upon your written request, without any penalty or charge, any contracts with PHA that are in effect at the time of your receipt of this letter.

Paragraph VII.D of the Order also provides that, if you do not terminate a contract currently in effect with PHA, the contract will terminate on the earlier of its termination or renewal date (including any automatic renewal date) or six (6) months after the date the enclosed Order becomes final. The Order became final on [appropriate date to be filled in by PHA]. However, if the contract terminates on a date prior to [appropriate date six months after Order became final to be filled in by PHA], the contract may be extended at your written request to a date no later than [appropriate date six months after Order became final to be filled in by PHA]. If you choose to extend the term of the contract, you may later terminate the contract at any time prior to [appropriate date six months after Order became final to be filled in by PHA].

Any request either to terminate or to extend the contract should be made in writing, and sent to me at the following address: [address].

Sincerely,

Appendix D

Letter to payors with bonus plan contracts

[letterhead of Respondent PHA]

[name of payor's CEO]

[address]

Dear _____:

Enclosed is a copy of a complaint and a decision and order (“Order”) issued by the Federal Trade Commission against Piedmont Health Alliance, Inc. (“PHA”), and ten individual physicians.

Pursuant to Paragraph VII.D of the Order, PHA must allow you to terminate, upon your written request, without any penalty or charge, any contracts with PHA that are in effect at the time of your receipt of this letter.

Any request to terminate the contract should be made in writing, and sent to me at the following address: [address].

Sincerely,