

Analysis of Agreement Containing Consent Order to Aid Public Comment
In the Matter of Evanston Northwestern Healthcare Corporation
and ENH Medical Group, Inc., Docket No. 9315

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order with Evanston Northwestern Healthcare Corporation (“ENH”), ENH Medical Group, Inc. (“ENH Medical Group”), and ENH Faculty Practice Associates (“Faculty Practice Associates”). On February 10, 2004, the Commission issued a three-count complaint, alleging in Count III that ENH and ENH Medical Group (“Respondents”)

care physicians. In the absence of their collective price fixing through ENH Medical Group, these physicians compete in the same geographic area for the sale of comparable physician services.

Competition has the effect of lowering the costs, and improving the quality, of physician services. ENH Medical Group deprived payors, employers, and individuals of the benefits of physician competition, by orchestrating agreements among rival physicians on price and other competitively significant terms, and by negotiating with payors for contracts that contained such fixed terms. By eliminating physician competition, ENH Medical Group was able to obtain increases in the prices that payors paid to the salaried and independent physicians.

The salaried physicians and independent physicians have not integrated their practices in a meaningful manner to enhance efficiency. In connection with the activities described in the complaint, the physicians have not shared financial risk. They also have not shared information technology systems, or complied with common performance standards or clinical protocols, to enhance services. ENH Medical Group's contracting practices violate of Section 5 of the Federal Trade Commission Act.

The Proposed Consent Order

The proposed consent order is designed to remedy the illegal conduct charged in the complaint and prevent its recurrence, while allowing Respondents to engage in legitimate conduct that does not impair competition. The proposed order is similar to recent orders that the Commission has issued to settle charges relating to unlawful agreements to raise physician prices.

The proposed order's specific provisions are as follows:

January 1, 2000. Paragraph V.B requires ENH Medical Group, at any payor's request and without penalty, or within one year after the Order is made final, to terminate its current contracts with respect to providing physician services. However, ENH Medical Group is not required by Paragraph V.B to terminate its risk-sharing contracts identified in confidential Appendix 1 of the order. Paragraph V.C requires ENH Medical Group to distribute payor requests for contract termination to all physicians who participate in ENH Medical Group.

The remaining provisions of Paragraph V, and Paragraphs VI through X, of the proposed order impose obligations on ENH Medical Group and ENH to report or provide access to information to the Commission to facilitate monitoring Respondents' compliance with the order.

The proposed order will expire in 20 years.