

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Deborah Platt Majoras, Chairman
Pamela Jones Harbour
Jon Leibowitz
William E. Kovacic
J. Thomas Rosch

In the Matter of)
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New Century Health Quality Alliance, Inc.,)
a corporation, and)
Prime Care of Northeast Kansas, L.L.C.,)
a limited liability company,)
)
and)
)
Elizabeth Gallup, M.D., J.D.,)
Steven Buie, M.D.,)
Thomas Allen, M.D., and)
G. Robert Powers, M.D.,)
individuals,)
)
and)
)
Associates in Family Medicine, P.A.,)
Briarcliff Medical Associates, P.C.,)
College Park Family Care Center, P.A.,)
Family Health Group, Chartered,)
Family Medical Group, P.A.,)
Hickman Mills Clinic, Inc.,)
Kanza Multispecialty Group, P.A.,)
Landmark Medical Center, Inc.)
Michael E. Monaco, M.D., d/b/a)
Select Healthcare, P.A.,)
Kenneth Norton, M.D., P.A.)
Overland Park Family Health Partners, P.A.,)
Quivera Internal Medicine, L.L.C.)
Seaport Family Practice, P.C.,)
Shawnee Family Care, P.A.)
Statland Clinic Ltd.,)
Sunflower Medical Group, P.A.,)
United Medical Group, L.L.C., and)
Kimberly M. Wirths, M.D., P.A.)

Docket No. C-4169

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as

5. New Century and Prime Care took actions in furtherance of the agreements and actions hereinafter alleged to be unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, through the following officials (hereinafter referred to as “Respondent Officials”), among others:

- a. Elizabeth Gallup, M.D., J.D., is New Century’s President. In that capacity, she directly participated in the conduct regarding Humana and other payors that is described and challenged as unlawful in this Complaint. Her principal address is 236 Arapahoe Circle, East, Lake Quivera, Kansas 66217.
- b. Steven Buie, M.D., who was New Century’s Chairman of the Board from 1999 through 2004. During that time, and in that capacity, he directly participated in the conduct regarding Humana and other payors that is described and challenged as unlawful in this Complaint. His principal address is 11201 Colorado Avenue, Kansas City, Missouri 64137.
- c. Thomas Allen, M.D., who is, and has been, New Century’s Chairman of the Board since January 1, 2005. During that time, and in that capacity, he directly participated in the conduct regarding Humana and other payors that is described and challenged as unlawful in this Complaint. His principal address is 4601 West 109th Street, #212, Overland Park, Kansas 66211.
- d. G. Robert Powers, M.D., who is, and has been, Prime Care’s Chairman of the Board. In that capacity, he directly participated in the conduct regarding Humana that is described and challenged as unlawful in this Complaint. His principal address is 2040 Hutton, #102, Kansas City, Kansas 66109.

6. Each of the following is a for-profit medical practice that is in the business of providing professional medical services, including physician services, to patients for a fee (hereinafter referred to as “Physician Practice Respondents”):

- a. Associates in Family Medicine, P.A., whose principal address is 8940 State Avenue, Kansas City, Kansas 66112;
- b. Briarcliff Medical Associates, P.C., whose principal address is 5400 North Oak Trfwy., Suite 200, Kansas City, Missouri 64118;
- c. College Park Family Care Center, P.A., whose principal address is 11755 West 112th Street, Overland Park, Kansas 66210;
- d. Family Health Group, Chartered, whose principal address is 12330 Metcalf, Suite 500, Overland Park, Kansas 66213;
- e. Family Medical Group, P.A., whose principal address is 8101 Parallel Parkway, Suite 100, Kansas City, Kansas 66112;
- f. Hickman Mills Clinic, Inc., whose principal address is 11201 Colorado Avenue, Kansas City, Missouri 64137;

- g. Kanza Multispecialty Group, P.A., whose principal address is 1428 South 32nd, Kansas City, Kansas 66106;
- h. Landmark Medical Center, Inc., whose principal address is 8800 N.W. 112th Street, Kansas City, Missouri 64153;
- i. Michael E. Monaco, M.D., d/b/a Select Healthcare, P.A., whose principal address is 5701 West 119th Street, Su

members of Prime Care, are now, and have been, in competition with each other and with other members of Prime Care for the provision of physician services in the Kansas City area; and (c) the Physician Practice Respondents that are members of Respondent New Century and the Physician Practice Respondents that are members of Respondent Prime Care, are now, and have been, in competition with each other and with other members of New Century or Prime Care for the provision of physician services in the Kansas City area.

9. All Respondents are “persons, partnerships, or corporations” within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

10. The general business practices of all Respondents, including the acts and practices alleged herein, are in or affect “commerce” as defined in the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

OVERVIEW OF PHYSICIAN CONTRACTING WITH PAYORS

11. Individual physicians and physician group practices contract with payors of health care services and benefits, including insurance companies, Blue Cross and Blue Shield plans, health maintenance organizations (HMOs), preferred provider organizations (PPOs), self-insured employers, and othe

needed by persons covered under a payor's program would be provided by the contracting IPA's members for the predetermined capitation charge, regardless of the actual quantity or type of covered services needed and provided.

15. The member medical practices' participation in New Century and Prime Care, and their offering of their services through the IPAs' capitation contracts, was not, however, the physicians' exclusive or even primary method of selling their professional medical services. Rather, the medical practices also continued to sell their medical services individually, on a fee-for-service basis, outside of New Century and Prime Care, to individual patients and through contracts individually entered into between the medical practice and payors.

ANTICOMPETITIVE CONDUCT

16. At various times from 1999 to 2005, certain payors decided that they no longer wished to purchase both physician services and the insurance guarantee component jointly provided by the IPAs' member medical practices through New Century's and Prime Care's capitation contracts. Those payors sought to contract solely for the professional medical services of the individual members of New Century and Prime Care on a fee-for-service basis. During that time (and presently) New Century's and Prime Care's physician members offered and sold their professional medical services on a fee-for-service basis to payors and individual patients who did not deal with them through New Century or Prime Care.

17. New Century and Prime Care, each acted in conspiracy with their respective member medical practices, including the Physician Practice Respondents, both as combinations of their respective members and together as a combination of the two organizations' collective members. The purpose of the conspiracies was to prevent payors who previously had capitation contracts with one or both of the IPAs from terminating those contracts and dealing directly with the IPAs' individual medical practices to purchase or contract for their professional medical services. Through their joint agreements and actions, New Century and Prime Care, and New Century's and Prime Care's members, including the Physician Practice Respondents, and often acting through Respondent Officials, restrained competition by, among other things, having their members agree to refrain, and in fact refrain, from dealing individually or contracting with payors, other than on a capitation basis through New Century and Prime Care, and by engaging in collective negotiations over terms, including price terms, and conditions of dealing with payors regarding the individual member medical practices' professional medical services.

18. Respondents conducted their anticompetitive activities on two levels. First, the member medical practices of New Century and Prime Care, including the Physician Practice Respondents, agreed to refuse to deal, and refused to deal, with payors regarding payors' offers of fee-for-service contracts with each individual physician practice. Rather, the physicians agreed to deal, and only would deal, with the payors through New Century and Prime Care, and only on terms, including price terms, that were collectively agreed upon through New Century and Prime Care. Second, New Century and Prime Care joined together to increase the bargaining power of the two IPAs with payors, and to attempt to force Humana and other payors to accept the terms of dealing jointly agreed upon through New Century and Prime Care on behalf of their combined membership.

19. The Physician Practice Respondents acted affirmatively to further the anticompetitive actions undertaken on their behalf by New Century and Prime Care, by engaging in one or more of the following actions: (a) par

NEGOTIATIONS WITH HUMANA

24. Humana, a health maintenance organization (HMO), is a payor that does business in the Kansas City area, which includes Wyandotte County, Kansas, Johnson County, Kansas, and other counties and areas. Humana offers the only Medicare HMO program in Wyandotte County and has approximately 5,000 enrollees in its program there. Prime Care physicians represent approximately 95% of Humana's primary care physician network in Wyandotte County. Humana also offers one of the two Medicare HMO programs in Johnson County. New Century physicians represent approximately 50% of Humana's primary care physician network in Johnson County. New Century and Prime Care were aware that without at least a substantial portion of the Prime Care and New Century physicians in its networks, Humana would have an insufficient number of primary care physicians to be able to offer its Medicare HMO programs in either Wyandotte or Johnson counties. New Century and Prime Care used this information to attempt to coerce Humana into accepting their contract demands. New Century and Prime Care physicians also represented a substantial portion of Humana's primary care physician network for its commercial lines of business in the Kansas City area.

25. Humana had been providing coverage to enrollees in the Kansas City area under its various programs, including its Medicare HMO program, in part through separate full capitation risk contracts with New Century and Prime Care. In 2004, however, Humana decided to eliminate all risk contracting in the Kansas City area, and to contract with individual physicians and physician group practices on a fee-for-service basis. Humana first informally notified New Century and Prime Care of its intention to eliminate its risk contracts with them. Subsequently, by letters dated September 1, 2004, and sent to New Century and Prime Care, Humana provided the formal notification, required by its contracts with each, to exercise its option to terminate each of those contracts without cause, effective December 31, 2004. However, those contracts required the New Century and Prime Care member medical practices to continue treating Humana patients for 180 days after a contract termination, or, based on the date notification was given, until June 30, 2005. The contract provided that the physicians would be paid on a fee-for-service basis for services rendered during this period.

26. The physicians in New Century and Prime Care wanted to continue contracting with Humana only through New Century and Prime Care, and on the terms of their previous capitation contracts with Humana. They did not want to contract directly with Humana on a fee-for-service basis, because they believed that Humana would offer lower payments than those the physicians previously had received under the capitation contracts.

27. On September 2, 2004, New Century and Prime Care sent a joint letter to Humana, signed by Drs. Buie and Powers in their capacities as chairmen of the two organizations. The letter informed Humana that New Century's and Prime Care's physicians would not negotiate with Humana on an individual basis, and would continue to contract with it only on a joint basis through New Century and Prime Care. In this letter, New Century and Prime Care also threatened that, unless Humana agreed to a contract by October 1, 2004, they would begin notifying patients covered by Humana, and the Medicare HMO program, who used New Century and Prime Care physicians that those physicians would withdraw from Humana's provider network. New Century and Prime Care sent copies of this letter to various executives at Humana, as well as to their member medical practices.

28. New Century and Prime Care previously had used similar tactics in their 2001-2002 contract negotiations with Humana. At that time, those tactics succeeded in preventing Humana from eliminating its risk contracts and implementing individual, non-risk contracts with physicians or medical practices. New Century and Prime Care used their prior success to encourage the physicians in their member medical practices to remain resolute, and to stick together through New Century and Prime Care, in their ongoing 2004 and 2005 dealings with Humana.

29. Almost immediately after sending Humana the September 2, 2004, letter, New Century and Prime Care embarked on a multifaceted public relations campaign, which included media advertisements geared toward employers and patients covered by Humana, flye

32. New Century and Prime Care were aware of Humana's need to have their physicians in its provider network in order for Humana to be able to offer its products for sale in the Kansas City area, and were aware of the disruption that would occur to patients covered under Humana programs if the New Century and Prime Care physicians did not contract with Humana. New Century and Prime Care expressed such awareness both to their members in Board meetings and memoranda, and to Humana in letters.

33. On February 18, 2005, the Boards of Directors of New Century and Prime Care jointly decided to encourage their member medical practices to contact Humana and inform it that they were closing their practices to new Humana patients. This was done, at least in part, to eliminate Humana's ability to market its products, thereby putting pressure on Humana to contract with New Century and Prime Care on the physicians' collectively determined desired terms. In February and March, 2005, New Century and Prime Care sent draft letters to all their member medical practices for use in notifying Humana that they were closing their practices to new Humana patients. New Century and Prime Care encouraged the physician practices to send the letters to Humana. The following Physician Practice Respondents, accounting for more than 100 of New Century's and Prime Care's approximately 125 total physicians, sent such letters to Humana closing their practices to new Humana patients:

Associates in Family Medicine, P.A.;
Briarcliff Medical Associates, P.C.;
College Park Family Care Center, P.A.;
Family Health Group, Chartered;
Hickman Mills Clinic, Inc.;
Kanza Multispecialty Group, P.A.;
Landmark Medical Center, Inc.;
Michael E. Monaco, M.D., d/b/a Select Healthcare, P.A

Landmark Medical Center, Inc.;
Michael E. Monaco, M.D., d/b/a Select Healthcare, P.A.;
Kenneth Norton, M.D., P.A.;
Overland Park Family Health Partners, P.A.;
Quivera Internal Medicine, L.L.C.;
Seaport Family Practice, P.C.; and
Sunflower Medical Group, P.A.

35. Humana was able to sign an individual contract with one New Century member medical practice consisting of three physicians. However, this group, Shawnee Family Care, P.A., immediately rescinded its agreement with Humana after discussions with New Century and Prime Care officials.

36. On April 1, 2005, New Century and Prime Care together filed a lawsuit against Humana in Kansas state court for breach of contract regarding Humana's termination of its capitation contracts with New Century and Prime Care, and seeking a preliminary injunction against that termination. Humana removed the case to federal district court for the Western District of Missouri and, on May 7, 2005, filed a counterclaim alleging federal and state antitrust law violations by New Century and Prime Care, acting as representatives of their member medical practices. After Humana had filed its antitrust counterclaim, and the Federal Trade Commission commenced an investigation of the actions of New Century and Prime Care, New Century's and Prime Care's member medical practices began to cease their concerted refusal to deal with Humana, and began to deal individually with Humana regarding its contract offers to them.

RESPONDENTS' CONDUCT IS NOT LEGALLY JUSTIFIED

37. Respondents' joint refusal to deal and negotiation of fees and other competitively significant terms, and the agreements, acts, and practices described above, have not been, and are not, reasonably related to any efficiency-enhancing integration among the physician members of New Century and Prime Care, or between New Century and Prime Care and their respective members, including the Physician Practice Respondents.

- c. depriving payors, including insurers and employers, and individual consumers, of the benefits of competition among physicians; and
- d. depriving consumers of the benefits of competition among payors.

39. 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 thereof, are continuing and will continue or recur in the absence of the relief herein requested.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-ninth day of September, 2006, issues its Complaint against Respondents New Century Health Quality Alliance, Inc., Prime Care of Northeast Kansas, L.L.C., Elizabeth Gallup, M.D., J.D., Steven Buie, M.D., Thomas Allen, M.D., G. Robert Powers, M.D., Associates in Family Medicine, P.A., Briarcliff Medical Associates, P.C., College Park Family Care Center, P.A., Family Health Group, Chartered, Family Medical Group, P.A., Hickman Mills Clinic, Inc., Kanza Multispecialty Group, P.A., Landmark Medical Center, Inc., Michael E. Monaco, M.D., d/b/a Select Healthcare, P.A., Kenneth Norton, M.D., P.A., Overland Park Family Health Partners, P.A., Quivera Internal Medicine, L.L.C., Seaport Family Practice, P.C., Shawnee Family Care, P.A., Statland Clinic Ltd., Sunflower Medical Group, P.A., United Medical Group, L.L.C., and Kimberly M. Wirths, M.D., P.A.

By the Commission.

Donald S. Clark
Secretary

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