



and Dreyer Clinic, Inc. (the “Advocate System Respondents”), hereinafter referred to collectively as “Respondents,” have violated Section 5 of the Federal Trade Commission Act, 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 challenges horizontal agreements to fix prices, engage in collective bargaining, and refuse to deal individually with health plans by competing independent physicians and physician practice groups that account for over 2,900 physicians in the Chicago metropolitan area (“Advocate Phy

physicians with medical-staff privileges at Advocate Christ Medical Center are members of Advocate Christ Hospital Health Partners.

- c. Respondent Advocate Good Samaritan Health Partners, Ltd. is a for-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal address at 1661 Feehanville, Suite 200, Mount Prospect, IL 60058. Approximately 315 physicians with medical-staff privileges at Advocate Good Samaritan Hospital are members of Advocate Good Samaritan Health Partners, Ltd.
- d. Respondent Advocate Good Shepherd Health Partners, Ltd. is a not-for-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal address at 1661 Feehanville, Suite 200, Mount Prospect, IL

### C. The Advocate System Respondents

5. Respondent Advocate Health Centers, Inc. is a for-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal address at 2545 S. Dr. Martin Luther King Drive, Chicago, IL 60616. It is a for-profit subsidiary of a for-profit subsidiary of Advocate Health Care Network and employs approximately 165 physicians. Respondent Advocate Health Centers, Inc. participated in the illegal conduct alleged herein by utilizing Respondent AHP to negotiate contract terms for the services of its employed physicians jointly with the independent-physician members of the PHO Respondents, with whom Advocate Health Centers, Inc. otherwise competes.

6. Respondent Dreyer Clinic, Inc. is a for-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal address at 1877 West Downer Place, Aurora, IL 60506. It is a for-profit subsidiary of a for-profit subsidiary of Advocate Health Care Network corporation and contracts with payors to provide physician services. Respondent Dreyer Clinic, Inc. participated in the illegal conduct alleged herein by utilizing Respondent AHP to negotiate contract terms for the services of physicians affiliated with Dreyer Clinic, Inc. jointly with the independent-physician members of the PHO Respondents, with whom Dreyer Clinic, Inc. otherwise competes.

### JURISDICTION

7. Respondent AHP is a corporation within the meaning of Section 4 of the FTC Act. At all relevant times, AHP engaged in substantial activities, including the contract negotiations described herein, for the pecuniary benefit of independent, profit-seeking physicians who were members of the PHO Respondents, which, in turn, were members of AHP.

8. The physician members of the PHO Respondents are members of AHP within the meaning of Section 4 of the Federal Trade Commission Act. AHP is governed by a Board of Directors that includes physicians elected by and from the physician members of the PHO Respondents. AHP committees, including the committee that makes contracting decisions on behalf of physicians, include physician representatives of the PHO Respondents' physician members. AHP's operations are funded in substantial part by the PHO Respondents, which are funded in substantial part by the PHO Respondents' member physicians. AHP regularly and in the ordinary course of business refers to these physicians as "members" of AHP.

9. The PHO Respondents are corporations within the meaning of Section 4 of the FTC Act. At all relevant times, the PHO Respondents engaged in substantial activities for the pecuniary benefit of their member physicians, a substantial majority of whom are independent, profit-seeking physicians.

10. Respondent Good Samaritan Health Partners, Ltd. and the Advocate System Respondents are for-profit corporations and, therefore, corporations within the meaning of Section 4 of the Fe

## **OVERVIEW OF PHYSICIAN CONTRACTING WITH PAYORS**

12. Physicians often contract with health plans and other third-party payors (“payors”) to establish the terms and conditions, including price terms, under which they render physician services to the payors’ enrollees. Physicians entering into such contracts often agree to lower compensation to obtain access to additional patients made available by the payors’ relationships with enrollees. These contracts may reduce payors’ costs and enable them to lower the price of insurance, and thereby result in lower medical-care costs for enrollees.

13. Absent agreements among competing physicians on the prices and other terms on which they will provide services to payors’ enrollees, competing physicians decide unilaterally whether to participate in payors’ provider networks based on the terms and conditions, including price, offered by the payors. Competition among physicians generally results in lower prices to the individuals enrolled in health-insurance plans.

## **ANTICOMPETITIVE CONDUCT**

14. AHP and the PHO Respondents, acting as a combination of their physician members and the Advocate System Respondents, and in conspiracy with them, have acted to restrain competition by, among other things, facilitating, entering into, and implementing agreements, express or implied, to fix the fee-for-service prices and other terms on which their physician members and the Advocate System Respondents would contract with payors; to engage in collective bargaining on behalf of their physician members and the Advocate System Respondents over terms and conditions of dealing with payors; and to refrain from negotiating individually with payors. Except to the extent that competition has been restrained as alleged herein, a substantial majority of those physicians have been, and are now, in competition with each other.

### **A. Respondents’ Contracting Process**

15. AHP’s contracting activity is controlled by the PHO Respondents and the Advocate System Respondents and, ultimately, by otherwise competing physicians. As corporate members of AHP, each PHO Respondent and each Advocate System Respondent holds a seat on AHP’s Board of Directors. Each PHO Respondent, in turn, is controlled by a Board of Directors that includes physicians elected by and from the PHO Respondent’s physician members.

16. From 1995 through 2000, each PHO Respondent negotiated through AHP and made contracting decisions collectively on behalf of its respective physician members. Each PHO Respondent’s Board of Directors established a minimum acceptable rate for fee-for-service contracts and communicated that rate to AHP.

17. Utilizing those rates, AHP negotiated rates and other terms with payors collectively on behalf of each PHO Respondent’s physicians and, at times, collectively on behalf of all Advocate Physicians.

18. After AHP reached an agreement on the price and other terms of the contract, the contract was transmitted to each PHO Respondent’s Board of Directors, which had the authority to accept or reject the contract or to make a counteroffer. If a PHO Respondent’s Board of

Directors accepted a payor's contract, AHP would execute the contract. AHP or the PHO Respondent would then, for the first time, transmit the contract to the PHO Respondent's physician members, who could opt in or opt out of the contract. AHP did not transmit to individual physicians any rates proposed by the payors during negotiations, and transmitted only the rates that their PHO Board of Directors approved.

19. From 1995 through 2000, AHP negotiated contracts with at least 16 payors using this process.

20. Effective January 1, 2001, AHP restructured its operations and assumed complete responsibility for contracting on behalf of each PHO Respondent and its physician members and, at times, the Advocate System Respondents. As part of this reorganization, AHP established a centralized Contract and Finance Committee to oversee contracting activity. The Contract and Finance Committee was comprised of physician representatives from each of the eight PHO Respondents, a representative from each Advocate System Respondent, and a representative from Advocate Health Care Network hospital system.

21. The Contract and Finance Committee's responsibilities included developing and approving phy

25. In early 2002, AHP began developing a strategy for negotiating a group contract with Blue Cross that would result in higher rates than the physicians would otherwise receive through their individual contracts. In publicizing this strategy to the physicians, AHP noted that “a major part of [AHP’s] value has been your access to the favorable rates negotiated by AHP for many of your fee-for-service contracts” and that “Advocate fully expects to negotiate rate increases that will bring reimbursement levels for [Blue Cross] products closer to reasonable market rates.”

26. In order to pursue its strategy, AHP solicited from all Advocate Physicians, and obtained from more than 1,700 of them, what AHP termed “Agency Agreements.” The Agency Agreements authorized AHP to act as the physicians’ agent in the negotiations with Blue Cross and permitted AHP to terminate and collectively renegotiate the physicians’ existing individual contracts with Blue Cross.

27. When some physicians attempted to rescind their Agency Agreements, AHP’s President instructed AHP staff in an internal e-mail to inform the physicians “that if they rescind there is no hope of getting increases going forward and it will impact everyone’s ability to get increases from other payors as [other payors] won’t be able to compete” with Blue Cross.

28. On October 1, 2002, AHP terminated, effective January 1, 2003, Blue Cross’s individual contracts with the over 1,700 physicians who signed the Agency Agreements and attempted to negotiate a group contract on their behalf.

29. In response to this mass termination, Blue Cross filed a lawsuit against AHP, alleging price fixing, group boycott, and various other claims. After extensive negotiations, and while an investigation of AHP by the Office of the Attorney





**VIOLATION OF THE FEDERAL TRADE COMMISSION ACT**

37. The combination, conspiracy, acts, and practices described above constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007, issues its Complaint against Respondents.

By the Commission.

Donald S. Clark  
Secretary

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