

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G G	George W. Andrews and Mary Ann Andrews. KECO Industries, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 98-16877 Filed 6-23-98; 8:45 am]

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FEDERAL TRADE COMMISSION

[File No. 941-0095]

M.D. Physicians of Southwest Louisiana, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 24, 1998.

ADDRESSES: Comment should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: William Baer, FTC/H-374., Washington, D.C. 20580. (202) 326-2932.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the

complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 19, 1998), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from M.D. Physicians of Southwest Louisiana ("MDP"). The agreement settles charges by the Federal Trade Commission ("Commission") that MDP has violated Section 5 of the Federal Trade Commission Act by: (1) Fixing the prices and other terms on which its members would deal with third-party payers; (2) collectively refusing to deal with third-party payers; and (3) conspiring to obstruct the entry of managed care into Calcasieu Parish, Louisiana.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by MDP that the law has been violated as alleged in the complaint.

The Complaint

Under the terms of the agreement, a proposed complaint would be issued by the Commission along with the proposed consent order. The allegations in the Commission's complaint are summarized below.

MDP is a physician organization based in Lake Charles, Louisiana. All of the members of MDP are physicians practicing in and around Calcasieu Parish, Louisiana, the parish in which Lake Charles is located. During the time period addressed by the allegations of the complaint, MDP members constituted a majority of all physicians practicing in Calcasieu Parish, Louisiana. In certain physician specialties, MDP members constituted all or most of the physician specialists practicing in Calcasieu Parish.

MDP was formed in 1987 as a vehicle for its members to deal concertedly with the impending entry into Calcasieu Parish of managed care. Beginning in 1987, and continuing until at least 1994, when MDP first learned that it was under investigation by the staff of the Commission, MDP conspired to fix the prices and other terms under which its members dealt with third-party payers. MDP also conspired to prevent or delay the entry into Calcasieu Parish of managed care.

Until 1994, MDP members refused to participate, either individually or collectively, in health care plans offered by Blue Cross and Blue Shield of Louisiana, the Louisiana State Employees Group Benefits Program, Aetna Insurance Company, Healthcare Advantage, Inc., and other third-party payers attempting to do business in Calcasieu Parish.

The members of MDP agreed that MDP would represent them in negotiations with third-party payers. MDP functioned as the exclusive representative of its members. Until 1994, the members of MDP dealt with third-party payers only through MDP.

MDP's members have not integrated their medical practices in any economically significant way, nor have they created any efficiencies that might justify this conduct.

MDP's actions have harmed consumers in Calcasieu Parish by, among other things, restraining competition among physicians,

depriving consumers of the benefits of competition among physicians, increasing the prices that consumers pay for physician services and medical insurance coverage, and depriving consumers of the benefits of managed care.

The Proposed Consent Order

The proposed consent order is designed to prevent the illegal concerted action alleged in the complaint, while allowing MDP to engage in legitimate joint conduct. Section II of the proposed order contains the core operative provisions. It prohibits MDP from: (1) Engaging in collective negotiations on behalf of its members; (2) orchestrating concerted refusals to deal; (3) fixing prices, or any other terms, on which its members deal; and (4) encouraging or pressuring others to engage in any activities prohibited by the order.

Section II includes a proviso allowing MDP to engage in conduct (including collectively determining reimbursement and other terms of contracts with payers) that is reasonably necessary to operate (a) any "qualified risk-sharing joint arrangement," or (b) provided MDP complies with the order's prior notification requirements, any "qualified clinically integrated joint arrangement." The proviso addresses the arrangements that MDP may enter into, rather than the overall nature of the group, because a physician group may enter into legitimate arrangements with some third-party payers but engage in illegal conduct with respect to others. For the purposes of the order, a "qualified risk-sharing joint arrangement" must satisfy two conditions. First, it must be one in which participating physicians share substantial financial risk. The order lists ways in which physicians might share financial risk. These track the four types of financial risk sharing set forth in the *Statements of Antitrust Enforcement Policy in Health Care*, issued jointly by the FTC and the Department of Justice.¹

Second, to be a "qualified" risk sharing arrangement, the arrangement must also be non-exclusive, both in name and in fact. An arrangement that either restricts the ability of participating physicians to contract outside the arrangement (individually or through other networks) with third-party payers, or facilitates refusals to deal outside the arrangement by participating physicians, does not fall within the proviso. Although exclusive physician joint arrangements are not

necessarily anticompetitive, they can impair competition, particularly when they include a large portion of the physicians in a market. In light of MDP's large share of the physician market, this definition does not permit MDP to form exclusive arrangements.

A "qualified clinically integrated joint arrangement" includes arrangements in which the physicians undertake cooperative activities to achieve efficiencies in the delivery of clinical services, without necessarily sharing substantial financial risk. For purposes of the order, such arrangements are ones in which the participating physicians have a high degree of interdependence and cooperation through their use of programs to evaluate and modify their clinical practice patterns, in order to control costs and assure the quality of physician services provided through the arrangement. As with risk-sharing arrangements, the definition of clinically integrated arrangement reflects the analysis contained in the 1996 FTC/DOJ *Statements of Antitrust Enforcement Policy in Health Care*. In addition, as with risk-sharing arrangements, the arrangement must be non-exclusive in light of MDP's large share of the market. In drafting the definition of clinically integrated arrangements, the Agencies sought to be flexible due to the wide range of providers who may participate, types of clinical integration possible, and efficiencies available. Consequently, the definition of a clinically integrated arrangement is by necessity less precise than that of a risk sharing arrangement.

In order for a qualified clinically integrated joint arrangement to fall within the proviso, MDP must comply with the order's requirements for prior notification. The prior notification mechanism will allow the Commission to evaluate a specific proposed arrangement and assess its likely competitive impact, in order to help guard against the recurrence of acts and practices that have restrained competition and consumer choice.

Section III requires that MDP notify its members and certain third-parties about the order. In addition, MDP must, for the next five years, distribute copies of the complaint and order to new members and annually publish the complaint and order in any annual report or newsletter sent to MDP members.

Sections IV, V, and VI consist of various reporting procedures, consistent with those found in other Commission consent orders, that are designed to assist the Commission in monitoring compliance with the order.

Finally, section VII terminates the order twenty years after the date it is issued, in accordance with Commission policy.

By direction of the Commission.

Donald S. Clark,

Secretary.

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GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090-0197]

Submission for OMB Review; Comment Request Entitled Service Contracting

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for public comments regarding reinstatement to a previously approved OMB clearance (3090-0197).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning Service Contracting. A request for public comments was published at 63 FR 19920, April 22, 1998. No comments were received.

DATES: Comment Due Date: July 24, 1998.

FOR FURTHER INFORMATION CONTACT: Al Matera, Office of GSA Acquisition Policy (202) 501-1224.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget (OMB) to reinstate information collection 3090-0197, Service Contracting. This information collection is necessary to determine whether a prospective contractor is responsible by obtaining information regarding financial and other capabilities of the prospective contractor.

¹ *Statements of Antitrust Enforcement Policy in Health Care*, issued August 28, 1996, 4 Trade Reg. Rep. (CCH) ¶ 13,153.