

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
18-JUL-03	20030775	G	Parallel Products of Kentucky, Inc.
		G	US Liquids of La., L.P.
		G	USL Parallel Products of California.
		G	Olympus Growth Fund III, L.P.
	20030783	G	Orlando Foods, Ltd.
		G	Orlando Foods, Ltd.
		G	Wachovia Corporation.
		G	CapitalSource Inc.
	20030784	G	CapitalSource Inc.
		G	Madison Dearborn Capital Partners III, L.P.
		G	CapitalSource, Inc.
		G	CapitalSource, Inc.
	20030785	G	Farallon Capital Institutional Partners, L.P.
		G	CapitalSource, Inc.
		G	CapitalSource, Inc.
		G	Farallon Capital Partners, L.P.
	20030786	G	CapitalSource, Inc.
		G	CapitalSource, Inc.
		G	Friedman Fleischer & Lowe Capital Partners, L.P.
		G	CapitalSource, Inc.
	20030790	G	CapitalSource, Inc.
		G	Jason M. Fish.
		G	CapitalSource, Inc.
		G	CapitalSource, Inc.
	20030791	G	John K. Delaney.
		G	CapitalSource, Inc.
		G	CapitalSource, Inc.
		G	CapitalSource, Inc.

FOR FURTHER INFORMATION CONTACT:

Sandra M. Peay, Contact Representative or Renee Hallman, Legal Technician. Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H-303, Washington, DC 20580, (202) 326-3100.

By direction the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03-19149 Filed 7-25-03; 8:45 am]

BILLING CODE 6750-01-M

FEDERAL TRADE COMMISSION

[File No. 021 0178]

Physician Network Consulting, L.L.C., et al.; 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 19, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: consentagreement@ftc.gov, as prescribed in the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT:

Jeffrey Brennan, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326-3688.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 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 thirty (30) 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 July 22, 2003), on the World Wide Web, at "[http://](http://www.ftc.gov/os/2003/07/index.htm)

www.ftc.gov/os/2003/07/index.htm." A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: consentagreement@ftc.gov. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR 4.9(b)(6)(ii).

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order with an independent practice association ("IPA") of

physicians who practice orthopedic medicine, its members physician practices, their negotiating agent, and the agent's managing director. The agreement settles charges that the respondents violated section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by orchestrating and implementing agreements to fix prices and other terms on which they would deal with a payor, and to refuse to deal with that payor except on collectively-determined terms. The respondents named in the complaint are the agent, Physician Network Consulting, L.L.C., and its managing director, Michael J. Taylor; the IPA, Professional Orthopedic Services, Inc.; and the three physician practices whose physicians are members of the IPA, The Bone & Joint Clinic of Baton Rouge, Inc., Baton Rouge Orthopaedic Clinic, L.L.C., and Orthopaedic Surgery Associates of Baton Rouge, L.L.C. The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

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 their terms in any way. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by respondents that they violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

The Complaint Allegations

Professional Orthopedic Services consists of approximately 28 physicians who provide approximately 70 percent of the orthopedic medicine services in the Baton Rouge, Louisiana, area. To be competitively marketable in the Baton Rouge area, a payor's health insurance plan must include in its physician network members of Professional Orthopedic Services, including physicians from at least The Bone and Joint Clinic or Baton Rouge Orthopaedic Clinic.

Physician Network Consulting is an agent for Professional Orthopedic Services' members. It represents physicians in contract negotiations with health insurance firms and other third-party payors. Physician Network Consulting's client base includes

physicians in approximately seven states. Michael J. Taylor is the founder and managing director of Physician Network Consulting.

As the complaint alleges, this matter involves the fixing of price terms demanded from United HealthCare of Louisiana, Inc., by Professional Orthopedic Services' members. With and through Mr. Taylor, the members agreed to terminate their respective contracts with United. They authorized Physician Network Consulting to be their common agent to negotiate more lucrative price terms with United. Although Physician Network Consulting purported to operate as a "messenger"—that is, an arrangement that does not facilitate horizontal agreements on price—it engaged in various actions that reflected or orchestrated such agreements.¹

According to the complaint, respondents succeeded in coercing United to accept their price demands, and thereby raised the cost of orthopedic services in the Baton Rouge area. Professional Orthopedic Services engaged in no efficiency-enhancing integration sufficient to justify respondents' agreement on price. By orchestrating agreements among Professional Orthopedic Services' members to deal only on collectively-determined terms, and by refusing to deal with United unless it would meet those terms, respondents violated section 5 of the FTC Act.

The Proposed Consent Order

The proposed order is designed to remedy the illegal conduct charged in the complaint and to prevent its recurrence. It is similar to recent consent orders that the Commission has issued to settle charges that physician groups engaged in unlawful agreements to raise fees they receive from health plans. The order also includes temporary "fencing-in" relief to ensure that the alleged unlawful conduct by respondents does not continue. Respondents Physician Network Consulting and Mr. Taylor conduct business in a number of states, and the order applies to their activities in all such states.

The proposed order's specific provisions are as follows:

¹ Some arrangements can facilitate contracting between physicians and payors without fostering an agreement among competing physicians on fees or fee-related terms. One such approach, sometimes referred to as a "messenger model" arrangement, is described in the 1996 Statements of Antitrust Enforcement Policy in Health Care jointly issued by the Federal Trade Commission and U.S. Department of Justice. See <http://www.ftc.gov/reports/hlth3s.htm>.

Paragraph II. contains the proposed order's core prohibitions against collectively negotiating prices or organizing group boycotts of payors. Paragraph II.A prohibits the respondents from entering into or facilitating any agreement between or among any physicians: (1) To negotiate with payors on any physician's behalf; (2) to deal, refuse to deal, or threaten not to deal with payors; (3) on what terms to deal with any payor; or (4) not to deal individually with any payor, or not to deal with any payor through any arrangement other than Professional Orthopedic Services.

Other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits the respondents from facilitating exchanges of information among physicians concerning whether, or on what terms, to contract with a payor. Paragraph II.C bars attempts to engage in any action prohibited by Paragraphs II.A or II.B. Paragraph II.D proscribes inducing anyone to engage in any action prohibited by Paragraphs II.A through II.C.

As in other orders addressing providers' collective bargaining with health care purchasers, certain kinds of agreements are excluded from the general bar on joint negotiations.

First, respondents would not be precluded from engaging in conduct that is reasonably necessary to form or participate in legitimate joint contracting arrangements among competing physicians, whether a "qualified risk-sharing joint arrangement" or a "qualified clinically-integrated joint arrangement."

As defined in the proposed order, a "qualified risk-sharing joint arrangement" possesses two key characteristics. First, all physician participants must share substantial financial risk through the arrangement, such that the arrangement creates incentives for the participants to control costs and improve quality by managing the provision of services. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement.

A "qualified clinically-integrated joint arrangement," on the other hand, need not involve any sharing of financial risk. Instead, as defined in the proposed order, physician participants must participate in active and ongoing programs to evaluate and modify their clinical practice patterns in order to control costs and ensure the quality of services provided, and the arrangement must create a high degree of interdependence and cooperation

among physicians. As with qualified risk-sharing arrangements, any agreement concerning price or other terms of dealing must be reasonably necessary to achieve the efficiency goals of the joint arrangement.

Second, because the order is intended to reach agreements among horizontal competitors, Paragraph II would not bar agreements that only involve physicians who are part of the same medical group practice (defined in Paragraph I.I).

Paragraph III, for three years, bars Physician Network Consulting and Mr. Taylor from negotiating with any payor on behalf of the other respondents, and from advising any physician who participates in Professional Orthopedic Services, or advising the respondent Physician Practices (defined in Paragraph I.G), to accept or reject any term, condition, or requirement of dealing with any payor. This temporary "fencing-in" relief will ensure that the alleged unlawful conduct by these respondents does not continue.

Paragraph IV, for three years, requires Physician Network Consulting and Mr. Taylor to notify the Commission before entering into any arrangement to act as a messenger, or as an agent on behalf of any physicians, with payors regarding contracts. Paragraph IV sets out the information necessary to make the notification complete.

Paragraph V requires Professional Orthopedic Services to send the complaint and order to all physicians who have participated in Professional Orthopedic Services, and to payors that contract with Professional Orthopedic Services.

Paragraphs VI and VII generally require Physician Network Consulting to distribute the complaint and order to physicians who have participated in any group that has been represented by Physician Network Consulting since January 1, 1999, and each payor with which Physician Network Consulting has dealt since January 1, 1999, for the purpose of contracting.

Paragraph VI.B requires Physician Network Consulting to distribute the complaint and order to present and past employees, and to each individual who has acted as a contractor for Physician Network Consulting relating to contracting or advising physicians with regard to their dealings with payors. Paragraph VI.B is intended to ensure that past as well as present employees and contractors of Physician Network Consulting are made aware of the complaint and consent in order to discourage similar illegal conduct.

In the event that Physician Network Consulting fails to comply with the requirements set forth in Paragraphs IV,

VI, VII.A.2, VII.B, or VII.C, Mr. Taylor must do so pursuant to Paragraph VIII.

Paragraph IX requires the respondent Physician Practices to terminate any contract with United HealthCare at United HealthCare's request and without penalty.

Paragraphs VII.B, VII.C, X, and XI of the proposed order impose various obligations on respondents to report or provide access to information to the Commission in order to facilitate monitoring respondents' compliance with the order.

The proposed order will expire in 20 years.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03-19148 Filed 7-25-03; 8:45 am]

BILLING CODE 6750-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Meeting of the Advisory Committee on Blood Safety and Availability

AGENCY: Office of the Secretary.

ACTION: Notice of meeting.

The Advisory Committee on Blood Safety and Availability will meet on Thursday August 21, 2003, and Friday, August 22, 2003, from 8 a.m. to 5 p.m. The meeting will take place at the Hyatt Regency Hotel on Capitol Hill, 400 New Jersey Ave., NW., Washington, DC 20001. The meeting will be entirely open to the public.

The purpose of this meeting will be to examine the effect of mass smallpox vaccinations on the blood donor base and the effects of emerging infectious diseases and bioterrorism on the blood supply.

Public comment will be solicited at the meeting. Public comment will be limited to five minutes per speaker. Those who wish to have printed material distributed to Advisory Committee members should submit thirty (30) copies to the Acting Executive Secretary prior to close of business August 15, 2003. Those who wish to utilize electronic data projection in their presentation to the Committee must submit their material to the Acting Executive Secretary prior to close of business August 15, 2003. In addition, anyone planning to comment is encouraged to contact the Acting Executive Secretary at her/his earliest convenience.

FOR FURTHER INFORMATION CONTACT:
CAPT Lawrence C. McMurtry, Acting

Executive Secretary, Advisory Committee on Blood Safety and Availability, Department of Health and Human Services, Office of Public Health and Science, 1101 Wootton Parkway, Room 275, Rockville, MD 20852; (301) 443-4788, FAX (301) 443-4361, e-mail lmcmurtry@osophs.dhhs.gov.

Dated: July 18, 2003.

CAPT Lawrence C. McMurtry,

Acting Executive Secretary, Advisory Committee on Blood Safety and Availability.
[FR Doc. 03-19067 Filed 7-25-03; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS-10084]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (CMS)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Design and Implementation of a Targeted Beneficiary Survey on Access to Physician Services Among Medicare Beneficiaries; *Form No.:* CMS-10084 (OMB# 0938-0890); *Use:* This survey of Medicare beneficiaries in targeted communities will be used to obtain information on whether they are experiencing problems accessing