

electromagnetic, ultrasonic, and combination electromagnetic and ultrasonic pest control devices. The Commission's proposed complaint alleges that proposed respondents violated section 5 of the Federal Trade Commission Act, 15 U.S.C. § 5, by making numerous representations about Global's pest control products for which they lacked a reasonable basis. Specifically, the complaint alleges that the following representations were unsubstantiated:

- Global's electromagnetic pest control products repel, drive away, or eliminate mice, rats, and cockroaches from homes and other buildings in two to four weeks and drive them away by sending a pulsating signal throughout or altering the field around the electrical wiring inside homes and other buildings; they act as an effective alternative to or eliminate the need for chemicals, pesticides, insecticides, exterminators, and pest control services;
- Global's combination electromagnetic/ultrasonic pest control devices effectively repel, control or eliminate mice, rats, cockroaches, rodents, insects, spiders, silverfish, and bats from homes and other buildings and upset nesting sites of mice, rats, and cockroaches within walls, ceilings, and floors by using the products' pulse or electromagnetic technology through the household wiring;
- Global's ultrasonic pest control devices effectively repel, drive away, or eliminate mice, rats, bats, crickets, spiders and other insects from homes and eliminate the need for toxic chemicals, poisons or traps; and
- Global's pest control products are effective within a space of a given size (for example, 1000 sq. ft. or 2000 sq. ft.).

The proposed consent order contains provisions designed to prevent proposed respondents from engaging in similar acts and practices in the future. Part I of the proposed order prohibits the following representations unless respondents possess competent and reliable scientific evidence that substantiates the representations:

- That any pest control product repels, controls, or eliminates, temporarily or indefinitely, mice, rats, cockroaches, or any other insects or animal pests and that it does so in an area of a certain size;
- that any pest control product is an effective alternative to or eliminates the need for chemicals, pesticides, insecticides, exterminators, or any other pest control product or service; and
- that any pest control product will alter the electromagnetic field, send a pulsating signal, or otherwise work inside the walls or through the wiring

of homes or other buildings in a manner that effectively repels, controls, drives away, or eliminates mice, rats, cockroaches, or any other insects or animal pests.

Part II of the proposed order requires respondents to possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, for claims about the benefit, performance, or efficacy of any product.

Part III of the proposed order requires the respondents to maintain certain records for five years after the last date of dissemination of any representation covered by the order. These records include: (1) All advertisements and promotional materials containing the representation; (2) all materials relied upon in disseminating the representation; and (3) all evidence in respondents' possession or control that contradicts, qualifies, or calls into question the representation or the basis for it.

Part IV of the proposed order requires distribution of the order to current and future principals, officers, directors, and managers, and to current and future employees, agents, and representatives having responsibilities with respect to the subject matter of the order.

Part V of the proposed order requires that the Commission be notified of any change in the corporation that might affect compliance obligations under the order. Part VI of the proposed order requires that for a period of three years, respondent Charles Patterson will notify the Commission of the discontinuance of his current business or employment or of his affiliation with any new business or employment involving the marketing of any consumer product.

Part VII of the proposed order requires the respondents to file a compliance report with the Commission.

Part VIII of the proposed order states that, absent certain circumstances, the order will terminate twenty (20) years from the date it is issued.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary

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FEDERAL TRADE COMMISSION

[File No. 021 0017]

The Maine Health Alliance, 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 18, 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) 326-2701.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), 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 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 18, 2003), on the World Wide Web, at <http://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 e-mail 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 the Maine Health Alliance and its Executive Director, William R. Diggins. The Alliance is an organization consisting of over 325 physicians and 11 hospitals in northeastern Maine. The agreement settles charges that respondents violated section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by facilitating and implementing agreements among physician members and among hospital members of the Alliance to fix prices and other terms of dealing for physician and hospital services with health insurance firms and other third-party payors, and to refuse to deal with these payors except on collectively determined terms. These price-fixing agreements and concerted refusals to deal among otherwise competing physicians and among otherwise competing hospitals, in turn, have kept the price of health care in northeastern Maine above the level that would have prevailed absent the illegal conduct. 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 the respondents that they violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

The Complaint Allegations

The Alliance was formed in 1995 by the vast majority of physicians and hospitals in five counties in northeastern Maine to negotiate payor contracts that contained "higher compensation" and more "advantageous" contract terms than the physicians and hospitals could obtain by dealing individually with payors. More than 85% of the physicians on staff at Alliance member hospitals are Alliance members, as are eleven of the sixteen hospitals in the five-county area. The physician and hospital members designated the Alliance as their negotiating agent to contract with payors, and authorized the Alliance to enter into, on their behalf, payor contracts.

Although the Alliance is a nonprofit corporation, and its member hospitals are tax-exempt organizations, a substantial majority of its physician members are for-profit entities. These for-profit physicians play a significant role in the governance of the Alliance and receive pecuniary benefits as a result of their participation.

Participating physicians select 11 of the 22 members of the Alliance's Board of Directors and thus exercise substantial authority over the policies and actions of the Alliance. The participating physicians are therefore "members" of the Alliance within the meaning of Section 4 of the FTC Act, which grants the Commission jurisdiction over nonprofit organizations that carry on business for the profit of their members. Because the Alliance engages in substantial activities that confer pecuniary benefits on these for-profit members, its activities engaged in on behalf of the physician and hospital members fall within the Commission's jurisdiction.

Alliance physician and hospital members have refused to contract with payors on an individual basis. Instead, the Alliance's Board of Directors authorized Mr. Diggins to act as a principal negotiating agent with payors on behalf of the collective membership of the Alliance. Mr. Diggins was instrumental in forming the Alliance, coordinating the membership's collective bargaining activity, and negotiating payor contracts on behalf of the collective membership.

As guidance for Mr. Diggins, the Board, in conjunction with its Contracts

Committee, compiled written "Contracting Guidelines and Parameters," setting forth price-related and other competitively significant terms that the Alliance required in order to contract with payors. Mr. Diggins reported the details of negotiations with payors to the Board and the Contracts Committee. Based on the recommendations of Mr. Diggins, and the Contracts Committee, the Board decided whether to accept or reject contracts with payors on behalf of the Alliance's physician and hospital members.

The Alliance and Mr. Diggins negotiated higher reimbursement for Alliance physician and hospital members, and more advantageous contract language, than the physicians and hospitals could have achieved through individual contracts with payors. Despite a written Alliance policy allowing members to contract independently of the Alliance, in fact the Alliance and Mr. Diggins encouraged the physician and hospital members to contract only through the Alliance, in order to maintain the Alliance's leverage over payors. Mr. Diggins provided Alliance physician and hospital members with a model letter for them to use to notify payors that they refused to negotiate individually, and that the Alliance would negotiate on their behalf. In response to payors' requests to contract directly with Alliance physician and hospital members, the members directed payors to the Alliance for contracting.

The Alliance's and Mr. Diggins' joint negotiation of fees and other competitively significant terms has not been reasonably related to any efficiency-enhancing integration. Although the Alliance has developed some clinical programs limited primarily to hospital members, none of the Alliance's clinical activities create any significant degree of interdependence among the physician or hospital participants, nor do the activities create sufficiently substantial potential efficiencies.

By orchestrating agreements among Alliance physician members, and hospital members, to deal only on collectively-determined terms, together with refusals to deal with payors that would not meet those terms, respondents have violated section 5 of the FTC Act.

The Proposed Consent Order

The proposed order is designed to prevent recurrence of the illegal conduct charged in the complaint, while allowing respondents to engage in

legitimate conduct that does not impair competition.

The proposed order's specific provisions are as follows:

The proposed order's core prohibitions are contained in Paragraphs II, III, and V. Paragraph II is intended to prevent the Respondents from participating in, or creating, future unlawful agreements for physician services. Paragraph II.A prohibits the Alliance and Mr. Diggins 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, not 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 to deal with any payor only through the Alliance.

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 Paragraph II.A or II.B. Paragraph II.D proscribes inducing anyone to engage in any action prohibited by Paragraphs II.A through II.C.

Paragraph III is intended to prevent the Respondents from participating in, or creating, future unlawful agreements for hospital services. Paragraphs III.A through D are identical to Paragraphs II.A through D, except that they apply to the Alliance's or Mr. Diggins' actions regarding the provision of hospital, rather than physician, services. This matter is the Commission's first law enforcement action charging an organization with price-fixing and other anticompetitive collusive conduct in the market for hospital services, in violation of section 5 of the FTC Act. Thus, unlike previous orders involving collective bargaining with health plans, this order bars agreements relating to both physicians and hospitals.

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. 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 or competing hospitals, 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 or all hospital 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, all 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.

In the event that the Alliance forms a qualified risk-sharing joint arrangement or a qualified clinically-integrated joint arrangement, Paragraph IV requires the Alliance to notify the Commission at least 60 days prior to negotiating or entering into agreements with payors, or discussing price or related terms among the participants of the arrangement. Notification is not required for negotiations or agreements with subsequent payors pursuant to any arrangement for which notice was given under Paragraph IV. Paragraph IV.B sets out the information necessary to make the notification complete. Paragraph IV.C establishes the Commission's right to obtain additional information regarding the arrangement.

Paragraph V prohibits Mr. Diggins, for three years, from negotiating with any payor on behalf of any Alliance physician or hospital member, and from advising any Alliance physician or hospital member to accept or reject any term, condition, or requirement of dealing with any payor. Mr. Diggins, however, is permitted to form, participate in, or take any action in furtherance of a qualified risk-sharing joint arrangement or qualified clinically-integrated joint arrangement on behalf of the Alliance.

Paragraph VI.A requires the Alliance to distribute the complaint and order to all physicians and hospitals who have participated in the Alliance, and to

payors that contract with the Alliance. Paragraph VI.B requires the Alliance, at any payor's request and without penalty, to terminate its current contracts with respect to providing physician services. If a payor does request termination, Paragraph VI.B requires the Alliance to terminate the contract on its earliest termination or renewal date. Paragraph VI.B also provides that a contract may extend up to one year beyond the termination or renewal date if the payor affirms the contract in writing and the Alliance does not exercise its right to terminate the contract.

Paragraph VII.A requires Mr. Diggins to distribute the complaint and order to physician and hospital groups he represents in contracting with payors, and to payors with which he has dealt in contracting while representing any physician or hospital groups.

Paragraphs VII.B through IX of the proposed order impose various obligations on respondents 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.

By direction of the Commission.

Donald S. Clark,
Secretary.

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FEDERAL TRADE COMMISSION

[File No. 021 0188]

Washington University Physician Network; 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 11, 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: