

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Timothy J. Muris, Chairman**
 Mozelle W. Thompson
 Orson Swindle
 Thomas B. Leary
 Pamela Jones Harbour

In the Matter of

**WASHINGTON UNIVERSITY PHYSICIAN NETWORK,
a corporation.**

Docket No. C-4093

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of certain acts and practices of Washington University Physician Network (“WUPN”), hereinafter referred to as “Respondent,” and Respondent having been furnished thereafter with a copy of the draft of Complaint that counsel for the Commission proposed to present to the Commission for its consideration and which, if issued, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order to Cease and Desist (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it has

reason to believe that Respondent has violated said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues the following Order:

1. Respondent Washington University Physician Network is a not-for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 7425 Forsyth Boulevard, Suite 307, Clayton, Missouri 63105.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Respondent” means Washington University Physician Network, its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- B. “Medical group practice” means a bona fide, integrated firm in which physicians practice medicine together as partners, shareholders, owners, members, or employees, or in which only one physician practices medicine.
- C. “Participate” in an entity means (1) to be a partner, shareholder, owner, member, or employee of such entity, or (2) to provide services, agree to provide services, or offer to provide services, to a payor through such entity. This definition applies to all tenses and forms of the word “participate,” including, but not limited to, “participating,” “participated,” and “participation.”
- D. “Payor” means any person that pays, or arranges for payment, for all or any part of any physician services for itself or for any other person. Payor includes any person that develops, leases, or sells access to networks of physicians.
- E. “Person” means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.

- F. “Physician” means a doctor of allopathic medicine (“M.D.”) or a doctor of osteopathic medicine (“D.O.”).
- G. “Preexisting contract” means a contract that was in effect on the date of the receipt by a payor that is a party to such contract of notice sent by a Respondent, pursuant to Paragraph III.B. of this Order, of such payor’s right to terminate such contract.
- H. “Principal address” means either (1) primary business address, if there is a business address, or (2) primary residential address, if there is no business address.
- I. “Qualified clinically-integrated joint arrangement” means an arrangement to provide physician services in which:
1. all physicians who participate in the arrangement participate in active and ongoing programs of the arrangement to evaluate and modify the practice patterns of, and create a high degree of interdependence and cooperation among, the physicians who participate in the arrangement, in order to control costs and ensure the quality of services provided through the arrangement; and
 2. any agreement concerning price or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies through the arrangement.
- J. “Qualified risk-sharing joint arrangement” means an arrangement to provide physician services in which:
1. all physicians who participate in the arrangement share substantial financial risk through their participation in the arrangement and thereby create incentives for the physicians who participate jointly to control costs and improve quality by managing the provision of physician services such as risk-sharing involving:
 - a. the provision of physician services to payors at a capitated rate,
 - b. the provision of physician services for a predetermined percentage of premium or revenue from payors,
 - c. the use of significant financial incentives (*e.g.*, substantial withholds) for physicians who participate to achieve, as a group, specified cost-containment goals, or
 - d. the provision of a complex or extended course of treatment

that requires the substantial coordination of care by physicians in different specialties offering a complementary mix of services, for a fixed, predetermined price, where the costs of that course of treatment for any individual patient can vary greatly due to the individual patient's condition, the choice, complexity, or length of treatment, or other factors; and;

2. any agreement concerning price or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies through the arrangement.
- K. "WU faculty members" means Washington University School of Medicine (WUSM) employees or contracted providers who provide WU physician services.
- L. "WU physician services" means physician services provided by WU faculty members on behalf of WUSM, and for which WUSM receives all financial remuneration from the payor for the physician's services.

II.

IT IS FURTHER ORDERED that Respondent, directly or indirectly, or through any corporate or other device, in connection with the provision of physician services in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, cease and desist from:

- A. Entering into, adhering to, participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding between or among any physicians:
1. To negotiate on behalf of any physician with any payor;
 2. To deal, refuse to deal, or threaten to refuse to deal with any payor;
 3. Regarding any term, condition, or requirement upon which any physician deals, or is willing to deal, with any payor, including, but not limited to, price terms; or
 4. Not to deal individually with any payor, or not to deal with any payor through any arrangement other than Respondent's arrangements;
- B. Exchanging or facilitating in any manner the exchange or transfer of information among physicians concerning any physician's willingness to deal with a payor, or

the terms or conditions, including price terms, on which the physician is willing to deal with a payor;

- C. Attempting to engage in any action prohibited by Paragraphs II.A. or II.B., above; and
- D. Encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any person to engage in any action that would be prohibited by Paragraphs II.A. through II.C. above.

PROVIDED HOWEVER, that nothing in Paragraph II shall prohibit any agreement involving, or conduct by, Respondent, that (A) is reasonably necessary to form, participate in, or take any action in furtherance of a qualified risk-sharing joint arrangement or qualified clinically-integrated joint arrangement, so long as the arrangement does not restrict the ability, or facilitate the refusal, of physicians who participate in it to deal with payors on an individual basis or through any other arrangement, or (B) solely involves WU faculty members with respect to WU physician services.

III.

IT IS FURTHER ORDERED that Respondent shall:

- A. Within thirty (30) days after the date on which this Order becomes final, send by first-class mail, with delivery confirmation, a copy of this Order and the Complaint to:
 - 1. each physician, except for WU faculty members, who participates, or has participated, in Respondent, that respondent has a record of having been in contact with since January 1, 1998, regarding contracting for the provision of physician services; and
 - 2. each officer, director, manager, and employee of Respondent;
- B. Within thirty (30) days after the date on which this Order becomes final, send by first-class mail, return receipt requested, copies of this Order, the Complaint, and the notice specified in Appendix A to this Order, to the chief executive officer of each payor that Respondent has a record of having been in contact with since January 1, 1998, regarding contracting for the provision of physician services;
- C. Terminate, without penalty or charge, in compliance with any applicable state laws, any preexisting contract between Respondent and any payor for the provision of physician services, upon receipt by Respondent of a written request from such payor to terminate such contract; and

- D. For a period of three (3) years after the date this Order becomes final:
1. Distribute by certified mail, return receipt requested, a copy of this Order and the Complaint to:
 - a. each physician who begins participating in Respondent, and who did not previously receive a copy of this Order and the Complaint, within thirty (30) days of the time that such participation begins;
 - b. each payor that contracts with Respondent for the provision of physician services, and that did not previously receive a copy of this Order and the Complaint, within thirty (30) days of the time that such payor enters into such contract; and
 - c. each person who becomes an officer, director, manager, or employee of Respondent, and who did not previously receive a copy of this Order and the Complaint, within thirty (30) days of the time that he or she assumes such responsibility; and
 2. Annually publish a copy of this Order and the Complaint in an official annual report or newsletter sent to all physicians who participate in Respondent, with such prominence as is given to regularly featured articles.

IV.

IT IS FURTHER ORDERED that Respondent shall notify the Commission:

- A. At least thirty (30) days prior to any proposed change in Respondent, such as dissolution, assignment, sale resulting in the emergence of a successor company or corporation, the creation or dissolution of subsidiaries, or any other change in Respondent that may affect compliance obligations arising out of this Order; and
- B. Of any change in Respondent's principal address, within twenty (20) days of such change in address.

V.

IT IS FURTHER ORDERED that Respondent shall file verified written reports within sixty (60) days after the date this Order becomes final, annually thereafter for three (3) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may by written notice require, setting forth:

- A. In detail, the manner and form in which Respondent has complied and is complying with this Order;
- B. The name, address, and telephone number of each physician, medical group practice, and other group of physicians that Respondent has represented or advised with respect to their dealings with any payor in connection with the provision of physician services;
- C. The name, address, and telephone number of each payor with which Respondent has dealt while representing any physician, medical group practice, or other group of physicians in connection with the provision of physician services;
- D. Any actions taken in furtherance of a qualified risk-sharing joint arrangement or qualified clinically-integrated joint arrangement provided for in Paragraph II of this Order; and
- E. Any arrangement under which Respondent would act as an intermediary or agent on behalf of any physicians with health plans regarding contracts under which physicians would be compensated for the provision of physician services.

VI.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, calendars, and other records and documents in its possession, or under its control, relating to any matter contained in this Order; and
- B. Upon five (5) days' notice to Respondent, and in the presence of counsel, and without restraint or interference from it, to interview Respondent or employees of Respondent.

VII.

IT IS FURTHER ORDERED that this Order shall terminate on August 22, 2023.

By the Commission, Commissioner Harbour not participating.

Donald S. Clark
Secretary

SEAL
ISSUED: August 22, 2003

Appendix A

[letterhead of WUPN]

[date]

[name of payor's CEO]
[address]

Dear _____:

Enclosed is a copy of a complaint and a consent order issued by the Federal Trade Commission against Washington University Physician Network ("WUPN").

Pursuant to Paragraph III.C. of the enclosed order, WUPN must allow you to terminate, upon written request, without any penalty or charge, any contracts with WUPN that were in effect prior to the receipt of this letter.

Any request either to terminate or to extend the contract should be made in writing, and sent to me at the following address: [address].

Sincerely,

[Signature of President or CEO of WUPN]
President or CEO WUPN
Washington University Physician Network