required by securities laws, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.

L. Defendants may offer a bonus or severance to employees whose primary employment responsibilities relate to the Divestiture Assets, that continue their employment until divestiture (in addition to any other bonus or severance to which the employees would otherwise be entitled).

M. Until the Divestiture Assets are divested to an Acquirer(s) acceptable to plaintiff, defendants shall provide to the Divestiture Assets, at no cost, support services needed to maintain the Divestiture Assets in the ordinary course of business, including but not limited to:

(1) Federal and state regulatory policy development and compliance;

(2) Human resources administrative services;

(3) Environmental, health and safety services, and developing corporate policies and insuring compliance with federal and state regulations and corporate policies;

(4) Preparation of tax returns;

(5) Financial accounting and reporting services;

(6) Audit services;

(7) Legal services;

(8) Routine network maintenance, repair, improvements, and upgrades;

(9) Switching, call completion, and other services necessary to allow subscribers to use mobile wireless services and complete calls;

(10) Billing, customer care and customer service related functions necessary to maintain the subscriber account and relationship;

(11) For each retail and indirect sales outlet, a sixty (60) day supply of inventory, including both handsets and accessories, branded as directed by the Management Trustee, based on each outlet's average sales for the prior two (2) months, and if the Management Trustee requests, ALLTEL shall make available in sufficient quantities, branded as directed by the Management Trustee, handsets and accessories, introduced by ALLTEL in similar markets that are compatible with the network in the sixteen (16) Divestiture Markets;

(12) The individual financial reports described in seciton VI.F shall be provided on a monthly basis; and

(13) The sales reports described in Section VI.G shall be provided on a daily basis.

N. Prior to the closing of the Transaction, defendants will notify plaintiff in writing of the steps defendants have taken to comply with this Section. If the Transaction has not closed within seven (7) days after the filing of the Complaint, on that day defendants will submit to plaintiff and the Management Trustee a detailed statement of how defendants will comply with Section VI.A prior to the closing of the Transaction, including but not limited to: (1) Marketing plans for the sale of mobile wireless telecommunications services by the mobile wireless business to be divested, including customer retention plans and promotions; (2) the designation of a management team who will have responsibility for and manage the Divestiture Assets prior to the closing of the Transaction, identifying any changes from pre-filing staffing; (3) plans for retention of employees and payment of retention bonuses to employees whose primary duties related to the mobile wireless business to be divested; and (4) plans for network maintenance, repair improvements, and upgrades of the Wireless Divestiture Assets.

O. This Preservation of Assets Stipulation and Order shall remain in effect until consummation of the divestitures required by the proposed Final Judgment or until further order of the Court.

Dated: July 6, 2005.

Respectively submitted.

For Plaintiff United States

Deborah A. Roy (D.C. Bar #452573),
Laura R. Starling,
Hillary B. Burchuk (D.C. Bar #366755),
Matthew C. Hammond,

Attorneys, Telecommunications & Media Enforcement Section, Antitrust Division.

U.S. Department of Justice, City Center Building, 1401 H Street, NW., Suite 8000, Washington, DC 20530, (202) 514–5621, Facsimile (202) 514–6381.

For Defendant ALLTEL Corporation

Michael L. Weiner,
Brian C. Mohr (D.C. Bar #385983),

Skadden, Arps, State, Meagher & Florn LLP, Four Times Square, New York, New York 10036–6522, (212) 735–2632.

For Defendant Western Wireless Corporation

Ilene Knable Gotts (D.C. Bar # 384740),

Wachtell, Lipton, Rosen & Katz, 51 W. 52nd Street, New York, NY 10019, (212) 403–1247.

Order

It is so ordered by the Court, this__day of__, 2005.

United States District Judge.

[FR Doc. 05–15020 Filed 5–8–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Final Judgment and Competitive Impact Statement; United States v. Federation of Physicians and Dentists, et al.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a Complaint, proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Southern District of Ohio in *United States* v. *Federation of Physicians and Dentists, et al.*, Civil Case No. 1:05–cv–431. The proposed Final Judgment is subject to approval by the Court after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), including expiration of the statutory 60-day public comment period.

On June 24, 2005, the United States filed a Complaint alleging that the Federation of Physicians and Dentists (''Federation''), Dr. Michael Karram, Dr. Warren Metherd, and Dr. James Wendel conspired with other OB-GYN members, to increase fees paid by commercial insurers to Federation members in violation of Sherman Act section 1.

To help restore competition, the proposed Final Judgment filed with the Complaint will enjoin Dr. Karram, Dr. Metherd, and Dr. Wendel (''the Settling Physicians'') from encouraging, facilitating, or participating in any agreement among competing physicians pertaining to any contract term, negotiations with any health care payer, or the provision of consulting, financial, legal, or negotiating services concerning any payer contract. The Settling Physicians are also not permitted to use the Federation for contracting and negotiation services, such as messenger services. The proposed Final Judgment also prohibits certain communications between any Settling Physician and any competing physician.

A Competitive Impact Statement, filed by the United States, describes the Complaint, the proposed Final Judgment, and the remedies available to private litigants. Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC in Room 215 North, 325 Seventh Street, NW. 20530 (telephone: 202/514–2692), and at the Office of the Clerk of the United States District Court for the Southern District of Ohio, Western Division, Potter Stewart U.S.

Courthouse, Room 103, 100 East Fifth Street, Cincinnati, Ohio 45202.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Mark J. Botti, Chief, Litigation I Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 4000, Washington, DC 20250 (Telephone 202/307–0001).

J. Robert Kramer II,

Director of Operations, United States Department of Justice, Antitrust Division.

United States District Court for the Southern District of Ohio, Western Division

United States of America, Plaintiff v. Federation of Physicians and Dentists, et al., Defendants

Civil No. 1:05CV431.

Chief Judge Beckwith.

United States Magistrate Judge Hogan.

Plaintiff's Competitive-Impact Statement Concerning the Proposed Final Judgment as to Setting Physician Defendants

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment as to Settling Physician Defendants (''Final Judgment''). The proposed Final Judgment was lodged with the Court on June 24, 2005, for eventual entry in this civil antitrust proceeding, following the parties' compliance with the APPA, and, if the Court determines, pursuant to the APPA, that the proposed Final Judgment is in the public interest.

I. Nature and Purpose of the Proceeding

The plaintiff filed this civil antitrust Complaint on June 24, 2005, in the United States District Court for the Southern District of Ohio, Western Division, alleging that Drs. Warren Metherd, Michael Karram, and James Wendel (''the Settling Physician Defendants''), obstetrician-gynecologist physicians (''OB–GYNs'') practicing in Cincinnati, Ohio, participated in a conspiracy that has unreasonably restrained interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. As alleged in the Complaint, this agreement has artificially raised fees paid by health insurers to OB–GYNs in the Cincinnati area that are ultimately borne by employers and their employees.

The plaintiff and the Settling Physician Defendants have stipulated that the proposed Final Judgment may be entered upon the Court's determinations that it serves the public interest and that there is no just reason to delay its entry while the litigation involving the two non-settling defendants proceeds. Entry of the proposed Final Judgment would terminate this action against the Settling Physician Defendants, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment, and to punish violations of it.

II. Description of the Events Giving Rise to the Alleged Violation of the Antitrust Laws

The Complaint in this action includes the following allegations. In the spring of 2002, the Settling Physician Defendants joined the Federation of Physician and Dentists (''Federation''), a membership organization of physicians and dentists, headquartered in Tallahassee, Florida. The Federation's membership includes economically independent physicians in private practice in many states, including Ohio. The Federation offers such member physicians assistance in negotiating fees and other terms in their contracts with health care insurers.

Cincinnati OB–GYNs became interested in joining the Federation primarily to negotiate higher fees from health care insurers. The Settling Physician Defendants assisted the Federation in recruiting other Cincinnati-area OB–GYNs as members. By June, 2002, the membership of the Federation had grown to include a large majority of competing OB–GYN physicians in the Cincinnati area.

With substantial participation by the Settling Physician Defendants, the Federation coordinated and helped implement its members' concerted demanded to insurers for higher fees and related terms, accompanied by threats of contract terminations. From September, 2002, through the fall of 2003, the Settling Physician Defendants communicated with Federation employees, each other, and other Cincinnati-area OB–GYN Federation members to assist the Federation in coordinating members' contract negotiations with health care insurers. The Settling Physician Defendants' communications included assisting the Federation in developing a strategy for the Federation to intensify members' pressure on health insurers to renegotiate their contracts, apprising each other and other physicians about their own practice group's negotiations, working primarily through the Federation to inform Federation members about steps to take to coordinate their negotiations, and leading a campaign for Federation members to endorse insurers that agreed to meet all Federation members' contract demands.

The Settling Physician Defendants' and their conspirators' collusion caused Cincinnati-area health care insurers to raise fees paid to Federation members OB–GYNs above the levels that would likely have resulted if Federation members had negotiated competitively with those insurers. As a result of the Settling Physician Defendants' and their conspirators' conduct, the three largest Cincinnati-area health care insurers were each forced to increase fees paid to most Federation members OB–GYNs by approximately 15–20% starting July 1, 2004, followed by cumulative increases of 20–25%, starting January 1, 2004, and 25–30%, effective January 1, 2005. The Settling Physician Defendants' and their conspirators' conduct also caused other insurers to raise the fees they paid to Federation members OB–GYNs.

III. Explanation of the Proposed Final Judgment

A. Relief To Be Obtained

The proposed Final Judgment prohibits the Settling Physician Defendants from encouraging, facilitating, or participating in any agreement or understanding among competing physicians about any contract term, about the manner in which those physicians will negotiate or deal with any health care payer, or about the use of any person or organization that provides consulting, financial, legal, or negotiating services concerning any payer contract. The proposed Final Judgment also enjoins the Settling Physician Defendants from using Defendant Federation of Physicians and Dentists (''Federation'') for any messenger, financial, legal, consulting, or negotiating service concerning any payer contract or contract.

The proposed Final Judgment also prohibits each Settling Physician Defendant from communicating with any competing physician about his or his practice group's view or position concerning the negotiation or acceptability of any proposed or existing payer contract or contract term, including his or his medical practice group's negotiating or contracting status with any payer. Each Settling Physician Defendant is also enjoined from communicating with any competing

physician about (1) any proposed or existing term of any payer contract that affects the fees that the Settling Physician Defendant or his medical practice group contracts for, or accepts from (or considers contracting for, or accepting from) any payer, (2) the duration, amendment, or termination of the payer contract; (3) utilization reviews and pre-certification; or (4) the manner of resolving disputes between the participating physician or group and the payer.

Subject to the injunctive provisions of the proposed Final Judgment, the Settling Physician Defendants may discuss with any competing physician any medical issues relating to the treatment of a specific patient and may participate in activities of any medical society. The proposed Final Judgment also does not limit the Settling Physician Defendants' advocacy or discussion concerning legislative, judicial, or regulatory actions in accordance with doctrine established in *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961), and its progeny. The proposed Final Judgment also allows the Settling Physician Defendants to respond to communications necessary to participate in lawful activities by clinically or financially integrated physician network joint ventures and multi-provider networks, as those terms are used in Statements 8 and 9 of the 1996 Statement of Antitrust Enforcement Policy in Health Care, 4 Trade Reg. Rep. (CCH) ¶ 13,153 (''Health Care Policy Statements'').

For a period of ten years following the date of entry of the Final Judgment, each Settling Physician Defendant must certify to the United States annually whether he and his agents have complied with the provisions of the Final Judgment.

B. Anticipated Effects of the Relief To Be Obtained on Competition

The proposed Final Judgment seeks to help restore lost competition, as alleged in the Complaint, and to help prevent recurrence of the alleged violation by enjoining the Settling Physician Defendants from conspiring to increase fees for their services and engaging in conduct that may facilitate such a conspiracy. The proposed Final Judgment seeks to achieve these objectives, in part, by prohibiting the Settling Physician Defendants from engaging in the types of concerted action that allegedly enabled Federation member OB–GYNs to coordinate their negotiations with health care payers. The prevention of coordinated negotiations should reestablish competition between many of the independent, participating Federation member OB–GYNs who coordinated their payer negotiations through the Federation. Such competition will allow purchasers of OB–GYN physician services to negotiate competitive contract terms with Cincinnati-area OB–GYN physicians, instead of being forced to pay the higher rates that have allegedly resulted from the alleged coordination of payer negotiations by the majority of Cincinnati-area OB–GYN physicians, who were members of the Federation. To help avoid recurrence of the alleged violation, the proposed Final Judgment also prohibits the Settling Physician Defendants from using the Defendant Federation or any other person or organization to coordinate contract negotiations with payers and from communicating with competing physicians about competively sensitive contract terms and about contract negotiations and contract status.

IV. Remedies Available to Potential Private Litigants Damaged by the Alleged Violation if the Proposed Final Judgment is Entered

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal district court to recover three times the damages the person has suffered, as well as the costs of bringing a lawsuit and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), entry of the proposed Final Judgment also would have no prima facie effect in any subsequent lawsuits that may be brought against the Settling Physician Defendants involving their alleged conduct in this action.

V. Procedures Available for Modification of the Proposed Final Judgment

The parties have stipulated that the proposed Final Judgment may be entered by this Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon this Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the entry of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments received during this period, and it remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with this Court and published in the **Federal Register**. Written comments should be submitted to: Mark J. Botti, Chief, Litigation I Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 4000, Washington, DC 20530.

The proposed Final Judgment provides that this Court retains jurisdiction over this action, and the parties may apply to this Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment Actually Considered by the United States

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against the Settling Physician Defendants. The United States is satisfied, however, that the prohibitions contained in the proposed Final Judgment will more quickly help achieve the primary objective of a trial on the merits—helping to reestablish competition among Federation member OB–GYNs and to prevent recurrence of the alleged violation.

VII. Standard or Review Under the APPA of the Proposed Final Judgment

After the sixty (60)-day comment period and compliance with the provisions of the APPA, if the United States has not withdrawn its consent to the proposed Final Judgment, it will move for entry of the proposed Final Judgment in accordance with Fed. R. Civ. P. 54(b) and the APPA. Persons considering commenting on the proposed Final Judgment are advised that, in determining, under the APPA, whether entry of the proposed Final Judgment is ''in the public interest,'' the Court shall consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the

consent judgment is in the public interest; and

(B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A)–(B).

As these statutory provisions suggest, the APPA requires the Court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995). In determining whether the proposed judgment is in the public interest, ''[n]othing in [the APPA] shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene,'' 15 U.S.C. 16(e)(2), ''which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). This caveat is also consistent with the deferential review of consent decrees under the APPA. See *United States* v. *Microsoft*, 56 F.3d at 1460–62; *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988).

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: July __, 2005.

Respectfully submitted,

For Plaintiff United States of America:

Gregory G. Lockhart,

United States Attorney.

Gerald F. Kaminski,

Assistant United States Attorney.

Bar No. 0012532.

Office of the United States Attorney, 221 E. 4th Street, Suite 400, Cincinnati, Ohio 45202, (513) 684–3711.

Steven Kramer, John Lohrer, Paul Torzilli,

Attorneys, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 4000, Washington, DC 20530. (202) 307–0997, steven.kramer@usdoj.gov.

Certificate of Service

I hereby certify that on July __, 2005, copies of the foregoing Plaintiff's Competitive-Impact Statement Concerning the Final Judgment as to Settling Physician Defendants were served by facsimile and first-class regular U.S. mail, postage prepaid, to:

Michael E. DeFrank, Esq., Hemmer Pangburn DeFrank PLLC, Suite 200, 250 Grandview Drive, Fort Mitchell, KY 41017, Fax: 859–578–38679, Attorney for Defendant Dr. James Wendel.

G. Jack Donson, Jr., Esq., Taft, Stettinius & Hollander, 425 Walnut Street, Suite 1800, Cincinnati, Ohio 45202, Fax: 513–381–0205, Attorney for Defendant Dr. Michael Karram.

Jeffrey M. Johnston, Esq., 37 North Orange Avenue, Suite 500, Orlando, FL 32801, Fax: 407–926–2453, Attorney for Defendant Dr. Warren Metherd.

Lynda Odenkirk, 43 Burwell Street, New Haven, CT 06513, Fax: 203–284–0624.

Federation of Physicians and Dentists, c/o Jack Seddon, Executive Director, 1310 Cross Creek Circle, Suite C2, Tallahassee, FL 32301, Fax: 850–942–6722.

Paul J. Torzilla,

Attorney, United States Department of Justice.

United States District Court for the District of Southern Ohio Western Division

United States of America, Plaintiff, vs. The Federation of Physicians and Dentists, et al., Defendants

Civil Action No. 1:05–cv–431.

Final Judgment as to Settling Physician Defendants

Whereas, Plaintiff, the United States of America, filed its Complaint on June 24, 2005, alleging that the setting physician Defendants Dr. Warren Metherd, Dr. Michael Karram, and Dr. James Wendel, participated in agreements in violation of Section 1 of the Sherman Act, and the Plaintiff and the settling physician Defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against, or any admission by the settling physician Defendants that the law has been violated as alleged in such Complaint, or that the facts alleged in such complaint, other than the jurisdictional facts, are true;

And whereas the settling physician Defendants agree to be bound by the provisions of this Final Judgment, pending its approval by this Court;

And whereas, the essence of this Final Judgment is to restore lost competition, as alleged in the Complaint, and to enjoin the settling physician Defendants from conspiring to increase fees for the provision of obstetrical and gynecological services;

And whereas, the United States requires the settling physician Defendants to agree to certain procedures and prohibitions for the purposes of preventing recurrence of the alleged violation and restoring the loss of competition alleged in the Complaint;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of Plaintiff and the settling physician Defendants, it is *ordered, adjudged and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and over the United States and the settling physician Defendants in this action. The Complaint states a claim upon which relief may be granted against the settling physician Defendants under Section 1 of the Sherman Act, 15 U.S.C. 1.

II. Definitions

As used in this Final Judgment:

(A) ''Communicate'' means to discuss, disclose, transfer, disseminate, or exchange information or opinion, formally or informally, directly or indirectly, in any manner;

(B) ''Competing physician'' means, in relation to each settling physician Defendant, any obstetrician-gynecologist in any separate, private medical practice, other than the settling physician's own practice, in any of the following counties: Boone and Kenton in Kentucky, and Hamilton and Butler in Ohio.

(C) ''Messenger service'' means, in relation to Defendant Federation of Physicians and Dentists or its successors, communicating to a payer any information the Federation receives from a member physician or communicating to a member physician any information the Federation receives from a payer;

(D) ''Payer'' menas any person that purchases or pays for all or part of a physician's services for itself or any other person and includes but is not limited to independent practice associations, individuals, health insurance companies, health maintenance organizations, preferred provider organizations, and employers;

(E) ''Payer contract'' means a contract between a payer and a physician by which that physician agrees to provide physician services to persons designated by the payer;

(F) ''Person'' means any natural person, corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute, governmental unit, or other legal entity; and

(G) ''Settling physician Defendants'' means Defendants Dr. Warren Metherd,

Dr. Michael Karram, and Dr. James Wendel, who have consented to entry of this Final Judgment, and all persons acting as agents on behalf of any settling physician Defendant.

III. Applicability

This Final Judgment applies to the settling physician Defendants and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV. Prohibited Conduct

The settling physician Defendants each are enjoined from, in any manner, directly or indirectly:

(A) Encouraging, facilitating, entering into, or participating in any actual or potential agreement or understanding between or among competing physicians about any fee or other payer contract term with any payer or group of payers, including the acceptability or negotiation of any fee or other payer contract term with any payer or group of payers;

(B) Encouraging, facilitating, entering into, or participating in any actual or potential agreement or understanding between or among competing physicians about the manner in which those physicians will negotiate or deal with any payer or group of payers, including participating in or terminating any payer contract;

(C) Encouraging, facilitating, entering into, or participating in any actual or potential agreement or understanding between or among competing physicians about the use of any person or organization that provides any consulting, financial, legal, or negotiating services concerning any payer contract, or that in any way communicates with any payer;

(D) Using Defendant Federation of Physicians and Dentists for any messenger, financial, legal, consulting, or negotiating service concerning any payer contract or contract term; or

(E) Communicating with any competing physician about:

(1) The actual or possible view, intention or position of each settling physician Defendant or his medical practice group, or any competing physician concerning the negotiation or acceptability of any proposed or existing payer contract or contract term, including his or his medical practice group's negotiating or contracting status with any payer, or

(2) Any proposed or existing term of any payer contract that affects:

(a) The amount of fees or payment, however determined, that the settling physician Defendant or his medical practice group charges, contracts for, or accepts from or considers charging, contracting for, or accepting from any payer for providing physician services;

(b) The duration, amendment, or termination of the payer contracts;

(c) Utilization review and pre-certification; or

(d) The manner of resolving disputes between the participating physician or group and the payer.

V. Permitted Conduct

(A) Subject to the prohibitions of Section IV of this Final Judgment, the settling physician Defendants:

(1) May discuss with any competing physician any medical issues relating to the treatment of a specific patient; and

(2) May participate in activities of any medical society; and

(B) Nothing in this Final Judgment shall prohibit settling physician Defendants from:

(1) Advocating or discussing, in accordance with the Noerr-Pennington doctrine, legislative, judicial, or regulatory actions, or other governmental policies or actions; or

(2) Responding to communications necessary to participate in lawful activities by clinically or financially integrated physician network joint ventures and multi-provider networks, as those terms are used in Statements 8 and 9 of the 1996 Statements of Antitrust Enforcement Policy in Health Care, 4 Trade Reg. Rep. (CCH) ¶ 13,153 (''Health Care Policy Statements'').

VI. Certification

For a period of ten years following the date of entry of this Final Judgment, each settling physician Defendant shall certify to the United States annually on the anniversary date of the entry of this Final Judgment whether he and his agents have complied with the provisions of this Final Judgment.

VII. Compliance Inspection

(A) For the purposes of determining or securing compliance with this Final Judgment or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time, duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to each settling physician Defendant, be permitted:

(1) Access during each settling physician Defendant's regular business hours to inspect and copy, or, at the United States' option, to require that each settling physician Defendant provide copies of all books, ledgers, accounts, records, and documents in his possession, custody, or control, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, each settling physician Defendant, who may have counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of each settling physician Defendant.

(B) Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, each settling physician Defendant shall submit written reports, under oath if requested, relating to any matters contained in this Final Judgment as may be requested.

(C) No information of documents obtained by the means provided in this Section shall be divulged by the United States to any person other than an authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) When a settling Physician Defendant furnishes information or documents to the United States, if the Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give the Defendant ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which such Defendant is not a party.

VIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment, but no other person, to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

IX. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

X. Public Interest Determination

Entry of this Final Judgment is in the public interest.

United States District Judge

Certification of Service

I hereby certify that on June 24, 2005, copies of the foregoing Final Judgment as to Settling Physician Defendants were served by facsimile and first-class regular U.S. mail, postage prepaid to:

Michael E. DeFrank, Esq., Hemmer Pangburn DeFrank PLLC, Suite 200, 250 Grandview Drive, Fort Mitchell, KY 41017, Fax: 859–344–1188, Attorney for Defendant Dr. James Wendel.

G. Jack Donson, Jr., Esq., Taft, Stettinius & Hollander, 425 Walnut Street, Suite 1800, Cincinnati, Ohio 45202, Fax: 513–381–0205, Attorney for Defendant Dr. Michael Karram.

Jeffrey M. Johnston, Esq., 37 North Orange Avenue, Suite 500, Orlando, FL 32801, Fax: 407–926–2452, Attorney for Defendant Dr. Warren Metherd.

Mary Beth Fitzgibbons, Fitsgibbons & Pfister P.L., 20 South Rose Avenue, Suite 6, Kissimmee, FL 34741, Fax: 407–343–1677, Attorney for Defendant Federation of Physicians and Dentists, Attorney for Defendant Lynda Odenkirk.

Paul J. Torzilli,

Attorney, United States Department of Justice.

United States District Court for the Southern District of Ohio, Western Division

United States of America, Plaintiff, vs., Federation of Physicians and Dentists, Lynda Odenkirk, Warren Metherd, Michael Karram, and James Wendel, Defendants

Civil Action No. 1:05–cv–431.
Filed June 24, 2005.

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this action for equitable and other relief against Defendants: Federation of Physicians and Dentists (''Federation''), Federation employee Lynda Odenkirk, and Federation members Warren Metherd, M.D., Michael Karram, M.D., and James Wendel, M.D., to restrain Defendants' violations of section 1 of the Sherman Act in concert with the Federation's other Cincinnati-area obstetrician and gynecologist (''OB–GYN'') members.

I. Introduction

1. In concert with approximately 120 OB–GYN Federation members located in the Cincinnati area (''Federation members''), Defendants participated in a conspiracy to increase fees paid by health care insurers to Federation members. The Defendant physicians and other competing Federation members joined the Federation to use its services to coordinate the renegotiation of their contracts with Cincinnati-area healthcare insurers. The Federation, with substantial assistance from the Defendant physicians, coordinated and helped implement its members' concerted demands to insurers for higher fees and related terms, accompanied by threats of contract terminations.

2. Defendants' and their conspirators' collusion caused Cincinnati-area health care insurers to raise fees paid to Federation members above the levels that would likely have resulted if Federation members had negotiated competitively with those insurers. As a result of Defendants' and other Federation members' conduct, the three largest Cincinnati-area health care insurers were each forced to increase fees paid to most Federation members by approximately 15–20% starting July 1, 2003, followed by cumulative increases of 20–25%, starting January 1, 2004, and 25–30%, effective January 1, 2005. Defendants' concerted conduct also caused other insurers to raise the fees they paid to Federation members.

3. The United States, through this suit, asks this Court to declare Defendants' conduct illegal and to enter injunctive relief to prevent further injury to consumers in the Greater Cincinnati area and elsewhere.

II. Defendants

4. The Federation is a membership organization comprising mostly physicians and dentists, and is headquartered in Tallahassee, Florida. The Federation's physician membership includes economically independent, competing physicians in private practice in localities in many states, including Cincinnati, Ohio. The Federation offers these independent physicians assistance in negotiating fees and other terms in their contracts with health care insurers.

5. Lynda Odenkirk has been employed in Wallingford, Connecticut, by the Federation since 1997 as a Regional Director and Contract Analyst. Ms. Odenkirk worked with Cincinnati-area Federation members from May, 2002, through at least 2004.

6. Warren Metherd, M.D., is an OB–GYN presently in a solo practice in Cincinnati.

7. Michael Karram, M.D., is an OB–GYN practicing in Cincinnati and is the Chief Executive Officer of Seven Hills Women's Health Centers, a practice comprising several groups totaling 22 OB–GYNs in Cincinnati.

8. James Wendel, M.D., is an OB–GYN practicing in Cincinnati and is the Chief Executive Officer of Mount Auburn Obstetrics and Gynecologic Associates, Inc., group practice of nine OB–GYNs in Cincinnati.

III. Jurisdiction and Venue

9. The United States brings this action to prevent and restrain Defendants' recurring violations of Section 1 of the Sherman Act. The Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. 4 and 28 U.S.C. 1331 and 1337.

10. During 2002 and 2003, the Federation's Cincinnati OB–GYN Chapter enrolled as paid members over 120 OB–GYN physicians, most practicing in the Southern District of Ohio and some in nearby northern Kentucky communities. The Federation and Ms. Odenkirk have transacted business and committed acts in furtherance of the conspiracy in the Southern District of Ohio. Drs. Metherd, Karram, and Wendel each provide OB–GYN services in the Southern District of Ohio. Consequently, this Court has personal jurisdiction over Defendants, and venue is proper in this District pursuant to 28 U.S.C. 1391(b)(2).

IV. Conspirators

11. Various persons, not named as defendants in this action, have participated as conspirators with Defendants in the offense alleged and have performed acts and made statements in furtherance of the alleged conspiracy.

V. Effects on Interstate Commerce

12. The activities of the Defendants that are the subject of this Complaint are within the flow of, and have substantially affected, interstate trade and commerce.

13. Federal representatives have traveled across state lines to meet with Federation members and also have communicated with them by mail, e-mail and telephone across state lines. Federation members have communicated with Federation representatives and have remitted their Federation membership dues across state lines. Some Federation members have also traveled from Kentucky to Ohio to attend Federation meetings and have communicated with other Federation members across the Ohio-Kentucky state line.

14. Federation members have treated patients who live across state lines, and Federal members have also purchased

equipment and supplies that were shipped across state line.

15. Health care insurers operating in the Cincinnati area remit substantial payments across state lines in Federation members. Health care insurers' payments to Federation members affect the reimbursements paid to insurers by self-insurers by self-insured employers, whose plans they administer, and also affect the premiums for health care insurance those insurers charge other employers. Many of the affected employers sell products and services in interstate commerce. The reimbursements and premiums those health care insurers receive from employers for administration or coverage of the expenses of their employees' health care needs, including OB–GYN services, represent a cost of production for those employers that affects the prices at which these firms' products are sold in interstate commerce.

VI. Cincinnati Area Health Care Insurers and OB–GYNS

16. At least six major health care insurers provide coverage in the Cincinnati area: WellPoint Health Networks, which during the events at issue here was named Anthem, Inc. (''Anthem''), Humana Inc. (''Humana'' or ''ChoiceCare''), United HealthCare Insurance Company (''United''), Cigna Corp. (''Cigna''), Aetna U.S. Healthcare Inc. (''Aetna''), and Medical Mutual of Ohio (''Medical Mutual'' or ''MMO'').

17. Anthem, Humana and United, through administration and insurance of health care benefits, are the three largest private health insurers operating in the Greater Cincinnati area. On the basis of market share, Medical Mutual, Aetna, and cigna each insures and administers a smaller, but still significant, share of privately financed health coverage in the Greater Cincinnati area. The remainder of the privately financed health insurance coverage market in the Greater Cincinnati area consists of a large number of insurers, each with a small share.

18. All of the major health care insurers operating in the Cincinnati area offer a variety of insurance plans to employers and their employees, including ''managed care'' plans such as health-maintenance organizations and preferred provider organizations. To offer such plans, an insurer typically contracts with participating providers, including physicians and hospitals, to form a provider network (or panel). Among other things, such contracts establish the fees that the providers will accept as payment in full for providing covered medical care to the insurer's subscribers. All of the major Cincinnati-area health care insurers consider it necessary to include in their provider panels a substantial percentage of OB–GYN physicians, who practice in the Cincinnati area to make their health care plans marketable to area employers and their employees. Before the formation of the alleged conspiracy, Federation member groups competed with each other, in their willingness to accept an insurer's proposed fee levels and other contractual terms, to be included in these insurers' provider panels.

VII. Defendants' Unlawful Activities

19. In the spring of 2002, Cincinnati OB–GYNs became interested in joining the Federation primarily to band together to negotiate higher fees from health care insurers. Through a series of meetings with and communications to Cincinnati-area OB–GYNs during the spring, the Federation-assisted by some local OB–GYNs, including Defendants Metherd, Karram, and Wendel-recruited Cincinnati-area OB–GYNs as Federation members and laid the foundation for their coordinated negotiating positions seeking higher fees from major Cincinnati health care insurers. At an initial membership recruitment meeting on April 17, 2002, a featured presentation by Jack Seddon, the Federation's Executive Director, focused on the need for a majority of area OB–GYNs practices to use the Federation's contract negotiation services to obtain increased fees from insurers.

20. Ms. Odenkirk, the Federation employee with primary responsibility for dealing with Federation members in Cincinnati, attended a second recruitment meeting on May 7, 2002. At this meeting, the OB–GYNs in attendance decided they needed a 60–70% participation rate in the Federation by OB–GYN physicians in the Cincinnati area for their activities as Federation members to have an impact on area insurance companies. By the end of May 2002, about 75–80% of actively practicing, Cincinnati-area OB–GYNs had opted to join the Federation.

21. On June 10, 2002, the Cincinnati-area OB–GYN Federation chapter held its organizational meeting, which was attended by representatives from many area OB–GYN practices. At the meeting Jack Seddon, the Federation's Executive Director, told the Federation members that, although the Federation could legally represent only individual physicians, all physicians must remember that they are part the Federation when making any business decisions regarding a contract. He also explained that, although the Federation could not directly recommend, through its Negotiation Assistance Program, whether Federation members should accept or reject a given provider contract, physicians would be given enough information to allow them to decide whether or not to sign a contract. At the June 10 meeting, Mr. Seddon also explained that Federation members could encourage other member physicians to use the Federation's Negotiation Assistance Program rather than negotiate on their own without Federation involvement.

22. In June and July 2002, Ms. Odenkirk, in consultation with some Federation members, established the order, or the ''game plan,'' by which she would review and coordinate their dealings with the first five health care insurers contracts: Anthem, ChoiceCare, United, Aetna, and Medical Mutual.

23. The Federation mailed a newsletter dated September 4, 2002, to all Federation member practices, notifying them that the Federation had reviewed their current Anthem contract. Accompanying the newsletter was the Federation's contract analysis and a set of proposed changes. An accompanying memorandum addressed to Cincinnati OB–GYN members from Ms. Odenkirk advised members that her contract analysis and proposed alternative language could be used to open negotiations with Anthem.

24. The September 4, 2002, newsletter also encouraged Federation members to use the Federation's ''extremely valuable service'' of acting as their third-party messenger and as a consultant, touted as providing the ''advantage of a nationally experienced consultant who can certainly look out for their best interests when negotiating with insurance plan executives.'' The newsletter suggested that those members dissatisfied with their Anthem contracts, as outlined in the accompanying contract analysis, should copy an enclosed sample ''third party messenger'' letter onto their practice's letterhead to open a dialogue with Anthem. The sample letter advised Anthem that the submitting practice had ''several items of concern'' regarding its current Anthem contract including ''contract language for various clauses and reimbursements rates'' and appraised Anthem that ''the purpose of this letter is to open negotiations with Anthem regarding the provider agreement.'' The sample letter further informed Anthem that the practice had decided to used the Federation as a ''third party messenger'' to facilitate negotiations and that the Federation would be contacting Anthem to open a dialogue. The sample letter also contained a thinly veiled warning that

the practice might resort to contract termination if its concerns were not addressed and was understood as such as Anthem.

25. Following Ms. Odenkirk's September 4, 2002, communications regarding the Anthem contract, most Federation member physicians practice groups copied the sample letter onto their own letterhead, signed it, and sent it to Anthem.

26. The Federation mailed a newsletter dated September 30, 2002, to all Federation member practices, informing them that there had been a significant response to the September 4, 2002, Anthem contract analysis and that many members had opted to use the ''full services'' of the Federation.

27. Starting on October 11, 2002, Ms. Odenkirk followed up on the Federation members' letters to Anthem. She notified Anthem that the Federation would be facilitating Federation members' discussion of their Anthem contract. For each such practice, Ms. Odenkirk sent Anthem a substantively identical letter enclosing a proposed amendment to the contracts ''that addresses some of their concerns.'' The set of proposed amendments was essentially the same set that Ms. Odenkirk had forwarded on September 4, 2002, to all Federation members in connection with her review of the Anthem contract.

28. Besides reporting to Federation members' on their response to Anthem, the September 30, 2002, Federation newsletter also focused on another insurer. The newsletter explained to Federation members that the Federation had reviewed their current ChoiceCare contract. The newsletter also included a sample letter to inform ChoiceCare that the Federation would be representing the medical practice as a third-party messenger. The process of negotiating with ChoiceCare then began and tracked the pattern of Federation coordination of negotiations with Anthem.

29. The Federation mailed a newsletter dated October 31, 2002, to all Federation member practices, explaining that the Federation had reviewed the contract of yet another insurer: United. The newsletter also included a sample letter to inform United that the Federation would be representing the medical practice as a third-party messenger. The process of negotiations with United then began and tracked the pattern of Federation coordination that occurred in negotiations with Anthem and ChoiceCare.

30. The October 31, 2002, newsletter also noted that 39 OB–GYN practices had joined the local Federation chapter. The newsletter recapped members' status with Anthem, noting that the Federation had initiated contact with Anthem, on behalf of those practices that had submitted third-party messenger letters to Anthem, and that the Federation had received a very significant response from the local chapter practices that had sent Anthem a third-party messenger letter. The newsletter also reported to Federation members that a significant proportion of them had provided e-mail addresses to participate in a ''Critical Alert'' mass e-mailing system developed by the Federation ''to avoid any situation where a member might miss critical information from the Federation.''

31. On November 1, 2002, the day after the October 31, 2002, newsletter, Ms. Odenkirk e-mailed a ''Critical Federation Alert'' to member practices. After updating all member practices on the status of matters involving United, Humana and Anthem, she wrote:

> All members are again reminded of their reason for joining the local chapter of the Federation. The overall purpose of the Federation is to allow member physicians to deal with the insurance industry on an equal basis. While the Federation cannot recommend that physicians sign or not sign a given provider agreement, the Federation can advise a member when they are being presented with a bad contract.

32. By letters dated November 14, 2002, sent to each practice, Anthem responded to the prior correspondence it had received from the practice and the Federation. The letters expressed Anthem's willingness to meet with the practices individually to discuss the concerns raised. Around the same period, Humana communicated to Federation members its preference to deal directly with each practice, rather than with the Federation representing the practices.

33. On November 15, 2002, Ms. Odenkirk spoke by telephone with Anthem representatives. Ms. Odenkirk told the Anthem employees that she represented a large number of OB–GYN practices in the Cincinnati area. Anthem told Ms. Odenkirk they would meet and correspond directly with individual practices. Though noting during the conversation that each practice would need to speak for itself, Ms. Odenkirk stated generally that the physicians would be seeking higher fees at 160% of Medicare levels.

34. Following her telephone conversation with Anthem, Ms. Odenkirk proceeded to coordinate Federation practices, ''individual'' dealings with Anthem, Humana, and United. She e-mailed a ''Critical Federation Alert'' on November 19, 2002, to each practice, addressed to the attention of ''Office Manager.'' The Alert informed each practice that the Federation had, in its role as a third-party messenger, notified Anthem of the practice's desire to initiate negotiations regarding the current Provider Agreement, and Advised Anthem that the practice had designated the Federation to represent it and act as its consultant in this process. The Alert then informed member practices they had two options: negotiate directly with Anthem (noting that if this option were selected the practice was encouraged to forward all communication from Anthem to the Federation), or advise Anthem that the practice wished to have the Federation speak on its behalf.

35. Responding promptly, as requested, to Ms. Odenkirk's November 19, 2002, Critical Federal Alert, most Federation member practices notified the Federal in writing that they wanted the Federation to speak on their behalf as their third-party messenger for contract negotiations with Anthem.

36. On Saturday morning, December 14, 2002, Ms. Odenkirk and most Federation members attended a membership meeting. The meeting was called amid apprehension among Federation members that large Federation member groups might make individual deals with insurers without regard to the interests of small Federation groups and solo practitioners. Federation members' discussion at the meeting informed the strategy that Ms. Odenkirk and the Defendant physicians developed for the Federation to coordinate Federation members' contract negotiations with Anthem, ChoiceCare, and United. The strategy employed the Federation's collective knowledge and consultation with Federation members as the ''key'' to ensuring that small groups were not ''left behind'' in negotiation with insurers.

37. Following up promptly on the sense of the December 14 meeting, Dr. Metherd, in coordination with Drs. Wendel and Karram, prepared a draft of a letter for Ms. Odenkirk to send to Federation members. The letter suggested that Federation members again send letters to Anthem demanding higher fees and contract amendments. Reviewing a redraft of the letter by Ms. Odenkirk on December 17, 2003, Dr. Wendel e-mailed Dr. Metherd: ''Have reviewed the letter and changes from Lynda [Odenkirk], I also think that we need to also send similar letters to [C]hoice[C]are and [U]nited. It[']s time to carpet bomb them with these letters and demand responses in a timely fashion. This may be a way for the

[F]ederation to help to facilitate the process.''

38. On December 20, 2002, Ms. Odenkirk sent to all Federation member practices the final version of the letter implementing the coordinated strategy developed from the December 14 membership meeting. The letter reviewed the status of the Federation's dealings with Anthem on members' behalf to discuss ''problems in the provider agreement.'' The letter apprised Federation members that Anthem had ''become recalcitrant'' toward the Federation's attempts to attend meetings on behalf of multiple physician groups and that ''[c]onsequently, the Federation [wa]s recommending another tactic by which you may negotiate with Anthem. '' The letter sought to provide Federation members ''with a clear set of guidelines * * * that w[ould] hopefully lead to a productive set of discussions.'' The ''guidelines'' set forth a number of steps for member groups to follow, which the Federation touted as ''the means by which you are most likely to achieve your goals.'' The letter also noted: ''If this tactic is UNSUCCESSFUL in achieving a contract with Anthem that meets your concerns, then the Federation will so notify you that you are continuing to work under a bad contract and that you are now left with two options. You may: (1) Continue to work under this bad contract or (2) Terminate the contract.''

39. Beginning in January 2003, and following up on the steps Ms. Odenkirk had outlined in her December 20, 2002, letter to Federation practices, most Federation member practices sent substantively identical letters to Anthem enclosing proposed contractual changes styled as ''necessary to achieve an equitable business relationship between Anthem and this OB/GYN practice.'' The letters sought a response from Anthem within two weeks of receipt and advised that ''all responses from Anthem will be forwarded to the Federation of Physicians and Dentists for review, interpretation and consultation.'' The letters closed with a slightly adapted version of the thinly veiled threat of termination first raised in the wave of September and October 2002 third-party messenger letters sent by Federation member practices to Anthem: ''This practice truly desires to avoid any interruption of obstetrical and gynecological services to Anthem's customers. Such a circumstance can be avoided by a meaningful and productive written response from Anthem regarding the issues raised herein no later than the aforementioned date.''

40. Proceeding over the next several months, Federation member practices—in close coordination with the Federation and with some additional direct coordination among Drs. Karram, Wendel, and Metherd—negotiated contracts with Anthem that provided for a substantial increase in fees. While targeting Anthem initially, the Federation, with encouragement and assistance from the Defendant physicians, also coordinated member groups' efforts to pressure ChoiceCare and United to renegotiate their contracts.

41. Implementing Federation members' similar strategy toward ChoiceCare, Ms. Odenkirk sent to ChoiceCare letters dated January 27–31, 2003, on behalf of 30 member practices. The letters reviewed the history of Humana's discussions with each practice, and included each practice's desired fee amounts. The letters asked for a response by February 14, 2003, and notified Humana that the practice ''still intends to forward any and all responses from Humana to the Federation of Physicians and Dentists for review, interpretation and consultation, as they have every right to do.'' Each letter again noted, as had the practices' third-party messenger letters sent to Humana in the fall of 2002, that a service interruption could be avoided by Humana's prompt and meaningful written response.

42. From December 2002, through March 2003, Dr. Karram's and Dr. Wendel's large OB–GYM groups spearheaded Federation member groups' attempts to renegotiate their contracts with Anthem and Humana. By a letter dated March 4, 2003, Humana proposed to Dr. Wendel's group a 30-month contract increasing fee levels substantially, in stages, over existing fees. According to the proposal, the terms were discussed and agreed upon in a telephone conversation on March 4. The next day, Dr. Wendel's office faxed Humana's proposal to Ms. Odenkirk.

43. On March 7, 2003, Ms. Odenkirk sent by e-mail and regular mail a Critical Federation Alert that had been prepared by Dr. Metherd in consultation with Drs. Karram and Wendel and edited and approved by Ms. Odenkirk and Mr. Seddon. The Alert encouraged Federation members to meet as soon as possible with Anthem and Humana to discuss proposed contract changes because the companies ''seem to legitimately desire discussions.'' Accompanying the Alert were negotiations guidelines to use in meetings, including advice to tell the health plan ''that you are seeking a fair contract both in language and reimbursements'' The guidelines also suggested to members, in part, that

> (3) You may explain to the health plan that you are, or will be, reviewing all of your major contracts and negotiating fairer terms for all, and that you are not just focusing on any one particular health plan. One particular concern a health plan may have is that they will be 'out front' if they were, for instance, to increase reimbursements thereby placing them at a disadvantage with their competitors in their markets.

44. As negotiations progressed, Ms. Odenkirk became active in advising groups how to proceed. Dr. Metherd also coordinated with Dr. Wendel and other physicians regarding the status of Federation members' negotiations with Anthem.

45. On April 1, 2003, Dr. Metherd e-mailed to Ms. Odenkirk and Mr. Seddon proposed additions to a draft Critical Federation Alert that Dr. Metherd had begun drafting with them in mid-March. Dr. Metherd proposed adding two paragraphs to a draft he had received from Mr. Seddon and explained the reason for his additions:

> It is becoming extremely important to somehow inform the smaller groups and solo practitioners that the large groups are not achieving favorable contracts at the expense of the small groups. * * * It's also important to somehow explain that the physicians are not going to get 170–180% of Medicare and that 30–35% is a more realistic number. Finally, from my personal discussions with the insurance companies, the members need to emphasize that all major plans are going to be looked at by the physicians. This seems to be critical for the insurance companies to hear.

46. By mid-April 2003, ChoiceCard had reached agreement with several of the larger Federation member groups. ChoiceCare continued making offers of varying fee amounts to other groups, which, in turn, forwarded them to, or discussed them with, Ms. Odenkirk to obtain her thoughts. In April 16, 2003, e-mail, Dr. Metherd updated Ms. Odenkirk and suggested how she should advise the smaller Federation member groups regarding ChoiceCare:

> Since you know what everyone is getting we need you to make sure that the small groups are pushing to end up in reasonable proximity (5% for example) to the larger groups in regards to reimbursements. The larger groups need to know that they can utilize [the Federation's] guidelines that we sent out on April 3 * * * as a way to pressure ChoiceCare to minimize variations in their reimbursements.
>
> Since you are the only one who, as the third party messenger, can know all the facts, it is imperative that you use the knowledge to push all of us in the same direction. * * * It is absolutely critical that one segment of the Federation here not feel that it has gained a significant advantage or suffered a

significant disadvantage at another's expense * * * especially as we will soon be moving onto United, Aetna, etc.

47. By May 1, 2003, Anthem had sent to all Federation members a contract amendment raising fees over a three-year period to 120% of Medicare fees, as of July, 2003; 125% as of January, 2004; and 130%, as of January, 2005.

48. By early May 2003, the large OB–GYN practice groups shifted their focus to United Healthcare. At a May 8 meeting with United, called by Dr. Wendel to discuss OB–GYN fees in Cincinnati, Dr. Wendel informed United that his group had been able to negotiate new deals with the other two top payers in Cincinnati. During the meeting, Dr. Wendel threatened that his group would terminate its contract if United did not offer it a satisfactory deal. At a meeting on the same day with United, Dr. Karram conveyed a similar message on behalf of his group.

49. Dr. Metherd communicated several times in May 2003 with Drs. Karram and Wendel concerning his negotiations on fees with ChoiceCare. On May 12, 2003, Dr. Metherd responded to ChoiceCare and attempted to leverage Federation members' contract renegotiations, with Anthem and suggested that ChoiceCare would face a boycott if it did not meet his and other OB–GYN's fee demands.

50. On May 11, 2003, Dr. Metherd sent an e-mail to Drs. Karram, Wendel:

> As per our discussions on Friday [May 9], I think we need to do some ''campaigning'' so to speak. We need to educate the members and encourage them to do four things.
>
> (1) They need to accept the contract from Anthem. While not perfect, it's actually pretty good and Lynda [Odenkirk] also feels the same based on my discussions with her this week. Apparently she is quite surprised that we have done as well as we have. * * *
>
> (2) They need to negotiate with ChoiceCare. * * *
>
> (3) Everyone needs to do the above so we can all move onto United next especially given the promising discussions that you have just had.
>
> (4) Finally, membership dues for the Federation are here and we need to convince the members that this is worth doing again this next year. * * *

51. Prompted by Dr. Metherd, on May 16, 2003, Ms. Odenkirk sent to essentially all Cincinnati Federation members a ''Federation Alert—Update.'' Ms. Odenkirk's Alert opined that the revised Anthem contract was ''as good as it's going to get at this point in time'' and suggesting it was ready to be signed. Ms. Odenkirk's Federation Alert also posed the Anthem contract to Federation members as a ''benchmark to follow'' when negotiating with other comparable health plans.

52. On May 20, 2003, Dr. Metherd sent to Federation members a proposal to endorse a ''large insurance company'' that had recently provided a contract with ''physician-friendly'' changes. Dr. Metherd explained that the other insurers could also be endorsed if they offered similar contracts and expressed the hope that ''this would then offer all companies an incentive to work with member physicians to achieve physician-friendly agreements.'' The proposal also noted, ''This concept has been reviewed and approved by the Federation leadership.''

53. At a May 28, 2003, meeting with United representatives, Dr. Metherd threatened to terminate his contract with United if it did not offer him satisfactory terms. After the meeting, he sent an e-mail to a United representative to emphasize the need for United to ''offer an acceptable contract to all members'' and complete fee negotiations promptly if it wished to participate in the ''endorsement'' program that had also been discussed at the meeting.

54. By May 30, 2003, United had met with about six Federation member groups. Each group conveyed that they wanted essentially the same deal and would terminate their contracts if they did not get it.

55. On May 29, 2003, Dr. Metherd sent an e-mail to all Federation members requesting their attention to ''some extremely important issues,'' including the need for doctors to keep the Federation informed of their negotiation status with various insurers. On May 29, Dr. Karram e-mailed Ms. Odenkirk and stated, ''I agree with Warren. We need to get everyone moving faster and to become more persistent otherwise they will not get increases in 03. I am sure that is what [ChoiceCare] is doing. Just think of the money they will save if they keep delaying people till 04.'' Dr. Karram's e-mail also asked Ms. Odenkirk: ''Are we ready to move on to the next player. I think that is Medical Mutual of Ohio.''

56. During June and July 2003, Ms. Odenkirk continued to advise Federation members concerning their contract negotiations with ChoiceCare, United, and, to a lesser extent, Anthem.

57. By letters dated June 13, 2003, Ms. Odenkirk sent to United proposed contractual amendments for nearly all Federation member groups. On June 17, 2003, she apprised the groups of the communications to United on their behalf. In a July 9, 2003, Federation Alert, Ms. Odenkirk suggested that all Federation members persist in negotiations with United and let United ''know that you have been able to achieve a significantly better agreement with one of their competitors, and are currently in discussions with another competitor, so if they want to remain competitive they need to answer you.'' She reiterated essentially the same message to Federation members in an August 1, 2003, Critical Federation Alert. By November 24, 2003, United had signed contracts, calling for substantially increased reimbursements, with 33 OB–GYN practice groups or solo practitioners, representing the vast majority of Federation member physicians.

58. On June 23, 2003, ChoiceCare representatives met with Drs. Karram, Metherd, and Wendel to learn more about the ''endorsement campaign'' Federation OB–GYNs were planning. Dr. Metherd described the endorsement as both public and private support of those managed-care organizations that had met the OB–GYN's established minimum fee levels. No physician articulated any criterion for being included in the endorsement other than meeting their fee demands, despite repeated questions about any other criteria. All three physicians confirmed that all physicians affiliated with the Federation would have to receive fees at or above the fee threshold to receive the endorsement.

59. On august 10, 2003, Dr. Metherd sent an e-mail survey to Federation member practices, inquiring as to the status of negotiations with their top three insurance companies. On September 12, 2003, Dr. Metherd faxed the results of his August 10 e-mail survey to Ms. Odenkirk. The results included the status of negotiations with their top three insurance companies for each of the 31 (out of 43) practices that responded.

60. In a September 18, 2003, memo addressed to Cincinnati area members, Ms. Odenkirk advised members that

> Cincinnati OB/GYNs have been discussing their issues with several health plans and have been reaching successful outcomes. Therefore, I continue to encourage you to hav[e] dialogues with various health plans. I am in the process [o]f reviewing the Aetna and Medical Mutual of Ohio (''MMO'') agreements, so if you're interested in opening a dialogue with either of these companies, please feel free to use the enclosed sample third party letters.

The enclosed sample letters, addressed to Aetna and Medical Mutual, appointed the Federation as the practice's third-party messenger, raised concerns about contract language and fees, and contained the usual language threatening contract termination.

61. At an October 7, 2003, Federation membership meeting, which Ms.

Odenkirk attended, both Dr. Wendel and Dr. Metherd announced to competing physicians that they had terminated their respective unfavorable contracts with Aetna because of Aetna's refusal to discuss the contracts.

62. In an October 17, 2003, Critical Federation Alert, Ms. Odenkirk updated members on the status of negotiations with Aetna and Medical Mutual. The Alert evaluated Aetna's new fee schedule as ''NOT 'reasonable for the Cincinnati market' '' and gave Federation members specific instructions on how to respond to Aetna's and Medical Mutual's fee proposals.

63. On October 21, 2003, Dr. Metherd e-mailed the entire Cincinnati membership to inform them that his practice had terminated Aetna. Although written under the pretense only of informing OB–GYNs not to refer Aetna patients to him, Dr. Metherd prefaced his message with an account of his reason for termination, decrying Aetna's fees as ''significantly lower than the current market level in the Cincinnati-Northern Kentucky area'' and Aetna's refusal to renegotiate his contract.

64. On October 29, 2003, Dr. Metherd e-mailed Lynda Odenkirk, reporting on strategizing at a meeting that day of the recently formed local Federation Chapter Executive Committee, with copies to the Executive Committee, which included Drs. Karram and Wendel:

> The meeting went well * * * we're still waiting to see whether and how Aetna responds to Seven Hills. Thus far no one else is getting any attention from them and, apparently, they are not being all that friendly with Seven Hills. We'll just have to wait and see * * * all of us at the meeting are aware of the goals of the entire Federation and will, hopefully, not forget them. [Dr. Wendel] and I are hoping everyone will react to Aetna as we had to [terminating their contracts] * * * time will tell. As for endorsing United * * * the message back to them is that they still haven't provided ''fair and equitable'' contracting (*i.e.,* the language issues) and that they will receive no endorsement as a result. They will be told this by Dr. Karram, and, that, if they do better in 2005 when we come back to them, then, perhaps they will be endorsed. (all ellipses in original)

65. In an October 29, 2003, memo to Cincinnati area members, Ms. Odenkirk noted that a new fee schedule from Cigna represented a reduction in rates, and, in her opinion, did not meet the notice requirements in the members' contracts with Cigna. Ms. Odenkirk's memo included an attached sample letter, addressed to Cigna, which not only raised the concerns noted in her memo, but also appointed the Federation as the practice's third-party messenger.

66. On November 5, 2003, Ms. Odenkirk prepared a sample letter for Federation members to send Aetna regarding its revised fee schedule. The sample letter advised Aetna that the sender had ''recently negotiated far better reimbursements with several of your competitors, which has significantly changed the Cincinnati market. Therefore we find that your fee schedule is not reasonable for this area.''

67. Dr. Metherd commented to Ms. Odenkirk on her sample letter to Aenta, in a November 5, 2003, e-mail, which he copied to the Cincinnati Chapter Executive Committee:

> The letter looks good * * * Both [another physician] and [Dr.] Wendel are making overtures to Aetna as I did in order to judge Aetna's reaction. Before we put this out there, let's see what they hear as well. * * * If Aetna responds to [another physician] and [Dr.] Wendel with a willingness to consider a proposal as they did with me, then we can encourage current Aetna providers (and those of us that just recently terminated) to renew contact with them via both phone and your letter.

68. On November 7, 2003, Lynda Odenkirk e-mailed a Critical Federation Alert updating Federation members on the status of negotiations with Medical Mutual, Cigna, and Aetna. Ms. Odenkirk's Alert reported about ''multiple terminations of the Aetna agreement by Cincinnati-Northern Kentucky OB/GYN physicians'' and that Aetna had now indicated a willingness to negotiate with area OB–GYNs. She strongly encouraged Federation members—even those that had noticed termination of their Aetna contracts—to negotiate with Aetna. Ms. Odenkirk also advised Federation members that Medical Mutual had been advised that part of its fee schedule offer was ''unacceptable.''

69. On November 17, 2003, Medical Mutual mailed proposed agreements offering substantially increased fees to nearly all Federation member practices. On November 19, 2003, Ms. Odenkirk e-mailed a Critical Federation Alert that informed Federation members that Medical Mutual's new ''proposal is, for all points and purposes, fair and reasonable, as it is now in line with agreements you've recently negotiated with other companies.'' By early 2004, most of the Federation member practices had signed and returned the contracts.

70. Ms. Odenkirk's November 19, 2003, Critical Federation Alert also gave Federation members specific instructions to persist in negotiations with Aetna, noting that its fee schedule was ''considerably below'' current levels. In the same November 19, 2003, Critical Federation Alert, Ms. Odenkirk instructed members that ''[b]y now you should have sent your third party letter to CIGNA'' and added that members should use with Cigna all of the points mentioned concerning Aetna. The Alert also included a general comment regarding the smaller insurers in the area, such as Aetna, Cigna, and Medical Mutual: ''Consequently, you should make these calls and make it plainly known to each that you will NOT settle for anything less than a 'fair and equitable' contract from each. Moreover, you are in such a position with the bigger companies that you NO LONGER have to accept UNFAIR contracts from these smaller companies.''

71. Coordinated by the Federation, using the Anthem agreement as a benchmark, as Ms. Odenkirk had urged, and using threats of terminating their services, Federation members were able to force ChoiceCare, United, and Medical Mutual to offer all Federation OB–GYN practices new contracts at fees and terms substantially equivalent to those in their Anthem contracts.

72. Most of the contracts between Federation member OB–GYNs and the major insurers run through, at least, the end of 2005. The Federation continues to have Cincinnati-area member OB–GYNs. Although some OB–GYNs have discontinued their membership in the Federation, the Cincinnati chapter of the Federation continues to exist and is available to coordinate another round of collectively negotiated contracts when the current contracts approach expiration.

VIII. Violation Alleged

73. Beginning at least as early as April, 2002, and continuing to date, Defendants and their conspirators have engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. This offense is likely to continue and recur unless the relief requested is granted.

74. The combination and conspiracy consisted of an understanding and concert of action among Defendants and their conspirators that the Federation's Cincinnati Chapter members would coordinate their negotiations with health care insurance companies operating in the Cincinnati area to enable the collective negotiation of higher fees from these health care insurers.

75. For the purpose of forming and effectuating this combination and

conspiracy, Defendants and their conspirators did the following things, among others:

(a) Successfully recruited as members of the Federation a high percentage of competing OB–GYNs practicing in the Cincinnati area.

(b) Designated the Federation to represent most Federation members in their fee negotiations with Anthem, Humana, United, Medical Mutual, Aetna, and Cigna;

(c) Reached an understanding to coordinate their negotiations through the Federation; and

(d) In coordination with the Federation demanded new, substantially higher fees from each insurer while threatening termination of their contracts if satisfactory results were not obtained.

76. This combination and conspiracy has had the following effects, among others:

(a) Price competition among independent and competing OB–GYNs in the Cincinnati area who became Federation members has been retrained;

(b) Health care insurance companies in the Cincinnati area and their subscribers have been denied the benefits of free and open competition in the purchase of OB–GYN services in the Cincinnati area; and

(c) Self insured employers and their employees have paid significantly higher prices for OB–GYN services in the Cincinnati area than they would have paid in the absence of this restraint of trade.

IX. Request for Relief

77. To remedy these illegal acts, the United States of America requests that the Court:

(a) Adjudge and decree that Defendants entered into an unlawful contract, combination, or conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. 1;

(b) Enjoin the Defendant Federation and its members, officers, agents, servants, employees and attorneys and their successors, the individual physician Defendants, and all other persons acting or claiming to act in active concert or participation with one or more of them, from continuing, maintaining, or renewing in any manner, directly or indirectly, the conduct alleged herein or from engaging in any other conduct, combination, conspiracy, agreement, understanding, plan, program, or other arrangement having the same effect as the alleged violations or that otherwise violates Section 1 of the Sherman Act, 15 U.S.C. 1, through price fixing of medical services, collective negotiation on behalf of competing independent physicians or physician groups, or group boycotts of the purchasers of health care services;

(c) Enjoin the Federation and any Federation representative from representing or providing consulting services of any kind to any medical practice group, or any self-employed physician; and

(d) Award to plaintiff its costs of this action and such other and further relief as may be appropriate and as the Court may deem just and proper.

Dated: June 24, 2005.

For Plaintiff, United States of America:

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Certificate of Service

I hereby certify that on June 24, 2005, copies of the foregoing Complaint were served by facsimile and first-class regular U.S. mail, postage prepaid, to:

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NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Additional notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Michael McDonald, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* August 26, 2005.

Time: 8:30 a.m. to 5 p.m.

Room: 315.

Program: This meeting will review applications for EDSITEment in Peer Review, submitted to the Division of