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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
Thomas B. Leary
Pamela Jones Harbour
Jon Leibowitz

In the Matter of	)	
	)	**Docket No. C-**
PARTNERS HEALTH NETWORK, INC.,	)	
a corporation.	)	

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C.§ 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that Partners Health Network, Inc. ("Partners Health"), hereinafter sometimes referred to as "Respondent," has violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges in that respect as follows:

Nature of the Case

1. This matter concerns agreements among competing physicians, acting through the Respondent, to fix prices charged to health plans and other third-party payors ("payors"), and to refuse to deal with payors except on collectively agreed upon terms. The Respondent had no legitimate justification for these agreements, which increased consumer health care costs in northwestern South Carolina.

Respondent

2. Partners Health, a physician-hospital organization ("PHO"), is a for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of South Carolina, with its principal address at 215 East 1st Avenue, Easley, South Carolina 29640-3038.

3. Partners Health was formed to increase the members' negotiating leverage concerning payment terms in health contracts. Partners Health contracts with payors on behalf of its member physicians jointly, as well as on behalf of its two member hospitals separately.

4. Partners Health members include more than 225 physicians licensed to practice allopathic or osteopathic medicine in South Carolina, and two non-profit hospitals. The hospitals, Palmetto Health Baptist Easley and Cannon Memorial Hospital, are the only two hospitals in Pickens County, located in northwestern South Carolina. About 150 of the Partners Health physician members practice in Pickens County, and they account for approximately 75% of the physicians in the county. To be marketable in the Pickens County area, a payor's health plan must contract with a large number of physicians who are members of Partners Health.

5. Partners Health's eight-member Board of Directors consists of four physicians and four hospital administrators. The physicians on the Board are elected by the Partners Health physician members to represent the members' interests in Partners Health's affairs.

6. On health plan contracting issues, the Board of Directors receives advice from its Advisory Board, which consists of ten representatives of the physician members and two hospital member representatives.

Jurisdiction

7. At all times relevant to this Complaint, Partners Health has been engaged in the business of contracting with payors, on behalf of Partners Health's physician members, for the provision of physician services.

8. Except to the extent that competition has been restrained as alleged herein, a substantial majority of Partners Health physician members have been, and are now, in competition with each other for the provision of physician services in the Pickens County, South Carolina, area.

9. Partners Health, a for-profit entity, is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

10. The general business practices of Partners Health, and of its physician members, including the acts and practices herein alleged, are in or affect "commerce" as defined in the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

Overview of Physician Contracting with Payors

11. Physicians contract with payors to establish the terms and conditions, including price terms, under which they render physician services to the subscribers to the payors' health plans ("insureds"). Physicians entering into such contracts often agree to lower compensation to

obtain access to additional patients made available by the payors' relationship with insureds. These contracts may reduce payors' costs and enable them to lower the price of insurance, and thereby result in lower medical care costs for insureds.

12. Absent agreements among them, otherwise competing physicians unilaterally decide whether to enter into payor contracts to provide services to insureds, and what prices they will accept pursuant to such contracts.

13. The Medicare Resource Based Relative Value Scale ("RBRVS") is a system used by the Centers for Medicare and Medicaid Services to determine the amount to pay physicians for the services they render to Medicare patients. Generally, payors in South Carolina make contract offers to individual physicians or groups at price levels specified by some percentage of the RBRVS fee for a particular year (e.g., "110% of 2004 RBRVS").

Anticompetitive Conduct

14. Partners Health, acting as a combination of its physician members, and in conspiracy with its members, has acted to restrain competition by, among other things, facilitating, entering into, and implementing agreements, express or implied, to fix the prices and other terms at which they would contract with payors; to engage in collective negotiations over terms and conditions of dealing with payors; and to have Partners Health members refrain from negotiating individually with payors or contracting on terms other than those approved by Partners Health.

15. Partners Health physician members have agreed, upon joining Partners Health, to be automatically bound by contracts that Partners Health negotiates on their behalf, unless the member opts out of the contract within 30 days after he or she receives notice of the contract. Physician members also agreed to refer insureds under Partners Health contracts only to other Partners Health physicians, except in medical emergencies.

16. Under the Partners Health contracting system, Partners Health polls its physician members to determine their fee expectations from payor contracts. Partners Health's Executive Director uses the highest of the fees received to formulate a "floor" fee schedule that he presents to payors as Partners Health's "fee expectations." Partners Health then negotiates the fees that the payor will present for the Partners Health members' consideration.

17. Under Partners Health's bylaws, the Board of Directors must approve any fee offer from a payor before the offer may be presented to the Partners Health physician members for their review. In practice, however, the Executive Director consults with the Advisory Board during contract negotiations, and the Board of Directors is merely notified of the offer terms that are to be presented to the physician members.

18. In some cases, a physician member who opts out of a Partners Health contract, or leaves Partners Health, may not individually contract with the payor due to the exclusivity provision Partners Health seeks to include in all of its contracts. Under this contract provision, payors that contract with Partners Health may not contract with individual physicians in Pickens County without the approval of Partners Health.

19. In 2003, after a payor objected to the Partners Health contracting system, Partners Health began referring to its contracting system as a "messenger model." Competing physicians sometimes use a "messenger" to facilitate their contracting with payors, in ways that do not constitute an unlawful agreement on prices and other competitively significant terms. Messenger arrangements can reduce contracting costs between payors and physicians. A messenger can be an efficient conduit to which a payor submits a contract offer, with the understanding that the messenger will transmit that offer to a group of physicians and inform the payor how many physicians across specialties accept the offer or have a counteroffer. A messenger may not negotiate prices or other competitively significant terms, however, and may not facilitate coordination among physicians on their responses to contract offers.

20. Despite calling its contracting system a messenger model, Partners Health continued to negotiate with payors the price terms to be offered or paid to the Partners Health physician members.

Contract Negotiations with Beech Street

21. Beech Street had both individual physician contracts with Pickens County physicians, and a letter of agreement with Partners Health for physician services dating to 1996. In November 1996, Partners Health informed Beech Street that it wanted to update the letter of agreement, and sent Beech Street its "physician fee expectations" in a fee schedule. Partners Health's Executive Director told Beech Street that the Partners Health Board of Directors would need to approve the negotiated contract terms before the terms would be presented to the Partners Health physicians for their acceptance. After negotiating price terms, Partners Health entered into a new contract with Beech Street.

22. In 2001, Partners Health approached Beech Street with a request to renegotiate the prices in the contract. Beech Street began negotiations by presenting the standard fee schedule it pays most South Carolina physicians. Partners Health told Beech Street that this offer fell below a "negotiation corridor," and presented a price list for several hundred procedures that was 18% higher than the Beech Street offer. Partners Health claimed it had developed the list based on its view of what the Partners Heath members had considered acceptable in past contract negotiations.

23. Beech Street agreed to the Partners Health fee schedule, with a few modifications. After the parties agreed to the prices and contract language, the final contract was presented to the Partners Health members, who accepted the new contract terms.

Negotiations with CCN & First Health

24. In the summer of 2001, the Partners Health Board of Directors ordered the renegotiation of the CCN contract to get higher prices. In July 2001, Partners Health sent CCN a list of higher fees for the existing contract's fee schedule. In response, CCN offered to pay a percentage of the Partners Health members' billed charges. Partners Health rejected the offer and countered with rates 5-15% higher than CCN's offer, still as a percentage of the members' billed charges, depending on specialty.

25. CCN responded by offering fee terms of a flat percentage of 2001 Medicare RBRVS for all procedures, which Partners Health told CCN was "completely unacceptable." Partners Health stated that it "can only agree to two different payment methodologies": either a percentage of members' billed charges, or a fee schedule that Partners Health sent CCN. Partners Health rejected the CCN offer without submitting it to the Partners Health physician members.

26. Partners Health terminated the CCN contract, effective February 2002, because "CCN will not agree to renegotiate with Partners Health based on Partners Health's historical payment expectations and methodology."

27. Following the contract termination, Partners Health organized its members' refusal to deal with CCN so as "to strengthen Partners Health Network's position." In December 2001, Partners Health members were instructed that "[i]f CCN makes any attempt to contact your hospital or office in the next two months then please do what you have previously done - refer them to the [Partners Health] office." In February 2002, Partners Health's Executive Director told the Partners Health physicians to continue to refuse to deal with CCN, terminate any direct contracts they may have with CCN, and steer CCN to Partners Health.

28. CCN's attempts at direct contracts with Partners Health members during this period resulted in the physicians directing CCN to Partners Health. Meanwhile, CCN merged with First Health and sought to combine the two companies' contracts with Partners Health into a single joint agreement that still distinguished between the two companies' brand names.

29. First Health sent direct contracts to Pickens County physicians in early 2003, but the physicians either referred First Health to Partners Health or sent First Health's contracting offer materials straight to Partners Health.

30. After receiving the forwarded offers for the First Health portion of the contract, Partners Health contacted First Health and demanded that any First Health portion of the combined contract have the same percentage-of-billed-charges arrangement as in the CCN portion of the contract. First Health refused, and offered Partners Health up to four different fee schedules for the First Health portion of the contract. Partners Health rejected each one, insisted on a discount-off-billed-charges arrangement, and never sent the fee schedules to the Partners

Health members.

31. In June of 2003, First Health agreed to take the “Partners Fee Schedule” for the First Health portion of the contract. Partners Health then presented the First Health fee offer to the Partners Health members, and they accepted it.

32. Eventually Partners Health reached a joint First Health/CCN agreement in December 2003. The CCN portion of the contract contained payment terms that were 17% higher than the original CCN offer.

Contract Negotiations with Premier Health Systems

33. Premier Health Systems ("Premier") has contracted with Partners since 1995. Contract renegotiations began in October 2000, when the Partners Health Executive Director told Premier that “general expectations” for a new contract included Premier’s acceptance of an attached fee schedule. Partners Health negotiated fee terms with Premier over the next ten months, ending when Premier accepted Partners Health’s fee expectations, which were 17% higher than Premier’s initial offer.

34. The Partners Health Executive Director informed the Partners Health members of Premier’s agreement to the fees in August 2001, telling them: "As customary regarding physician payment, PHN has negotiated specialized pricing for over 600 [procedures].”

35. In December 2003, Partners Health polled its members to learn what fees they would accept for a new Premier contract. The individual member practices responded with their fee requests, which varied by practice. However, Partners Health presented Premier with a single fee schedule that listed the highest requested rate among the Partners Health practices.

36. On March 10, 2004, Partners Health sent Premier an email: “Bottom line . . . [the attached fee schedule] represent[s] Partners Health’s expectation,” which averaged 12% higher than the currently contracted rates. Premier countered with a 6% increase over the current rates. Partners Health sent the Premier increase to its members in May 2004, and they accepted the contract.

Contract Negotiations with United Healthcare

37. For years, United Healthcare of South Carolina, Inc. (“United”), accessed Partners Health physician members by contracting with third-party administrator Medcost, which had contracts with Partners Health for physician services.

38. United told Partners Health in March 2003 that it wanted to contract with Partners Health directly, instead of accessing the Partners Health physician members through Medcost. United included a fee schedule for 50 procedures. Partners Health responded with a list of

"payment expectations for a contract," including a fee schedule that listed hundreds of procedures with an overall average price almost double United's proposal. United responded with a more comprehensive counteroffer of fees than it had submitted on March 5, on average 39% higher than its original offer.

39. After receiving United's offer, Partners Health suspended negotiations. In May 2003, Partners Health sent its members a memo detailing its decision to cease negotiations with United. Partners Health explained that the two deal-breakers were that United only wanted Partners Health to facilitate individual physician contracts, and that United would "only offer a standard/universal fee schedule (no negotiating flexibility) at rates significantly lower than Medcost." The memo continued by stating that United's requests "are unacceptable to Partners Health because facilitating individual agreements achieves no future clout and defensive strength . . . and accepting rates so much lower is inappropriate in a climate of increasing overhead costs."

40. In July 2003, United sent an antitrust article on messenger arrangements to the Partners Health physician practices, and at the same time it asked Partners Health to messenger the United physician fee schedule to the Partners Health members. In the August 15, 2003, Advisory Board meeting, after discussing the antitrust issues raised by United's article, the Advisory Board decided to send the first United offer to the Partners Health members, and ask them to communicate their fee expectations to the Executive Director, "who will then messenger back [to United] a comprehensive offer" for the entire membership. The Advisory Board agreed that "[i]f a majority of [Partners Health] members do not want to contract with United at all then Partners Health will suspend negotiations again."

41. On September 24, 2003, Partners Health forwarded United's original offer to its members for the first time. Along with the offer, Partners Health "polled" its members by asking them to identify their preferences for contracting with United -- either through Partners Health, another PHO, directly, or not at all. If the members wanted to contract through Partners Health, they were told to return a list of fee counteroffers for United.

42. An October 15, 2003, follow-up memo to the Partners Health members stressed that Partners Health needed 40 out of the 49 practices to choose to contract through Partners Health "to develop a credible contracting position with [United]." The memo stated "[t]he majority of [Partners Health] members . . .will only contract through Partners Health with [United] as verified by the responses already received." The memo concluded by emphasizing that Partners Health "[has] the market completely on our side in terms of access," and that "[e]mployers will drop [United] like a stone come January if there is not a full network in place as a result of severing ties with Medcost without contracting to develop [United's] own [network]."

43. Partners Health then sent its members a memorandum naming the practices that returned the polling form and fee requests, along with a list of practices that chose to contract directly with United. This memorandum bolstered the members' resolve to refuse to deal with

United, and targeted the practices choosing to directly contract for peer pressure to conform to the group's wishes to jointly contract.

44. In February 2004, Partners Health told United that it messengered United's offers to the Partners Health members, and included what it called the "members aggregated fee expectations," in the form of a single fee schedule.

45. United has been unable to contract with Partners Health, and is still unable to contract with enough physicians to have a viable network in the Pickens County area. Moreover, Partners Health successfully pressured MedCost, through the threat of network termination, to end United's access to the Partners Health members through MedCost, effective as of July 1, 2004.

Contracting with Other Payors

46. Partners Health, on behalf of its physician members, has orchestrated collective negotiations with other payors who do business, or have attempted to do business, in the Pickens County area, including Aetna, Great-West Healthcare, MedCost, Private Health Care Systems, Southcare, United Payors/United Providers, and USA Managed Care, Inc. Partners Health negotiated with these payors on price, making proposals and counter-proposals, as well as accepting or rejecting offers, without transmitting them to members for their individual acceptance or rejection. Partners Health also facilitated collective refusals to deal and threats of refusals to deal with payors. Partners Health's members collectively accepted or rejected these payor contracts, and refused to deal with these payors individually. Due to Partners Health's dominant position in the Pickens area, these coercive tactics have been successful in raising the prices paid to its physician members.

Respondent's Price-fixing Is Not Justified

47. The physician members of Partners Health have not integrated their practices in any economically significant way, nor have they created efficiencies sufficient to justify their acts or practices described in paragraphs 14 through 46.

Respondent's Actions Have Had Substantial Anticompetitive Effects

48. Respondent's actions described in Paragraphs 14 through 46 of this Complaint have had, or tend to have had, the effect of restraining trade unreasonably and hindering competition in the provision of physician services in the Pickens County area in the following ways, among others:

a. price and other forms of competition among physician members of Partners Health were unreasonably restrained;

b. prices for physician services were increased; and

c. health plans, employers, and individual consumers were deprived of the benefits of competition among physicians.

Violation of the Federal Trade Commission Act

49. The combination, conspiracy, acts, and practices described above constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. Such combination, conspiracy, acts, and practices, or the effects thereof, are continuing and will continue or recur in the absence of the relief herein requested.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this _____ day of _____, 2005, issues its Complaint against Respondent Partners Health.

By the Commission.

Donald S. Clark
Secretary

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