

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

COMMISSIONERS: **Timothy J. Muris, Chairman**
 Sheila F. Anthony
 Mozelle W. Thompson
 Orson Swindle
 Thomas B. Leary

)	
In the Matter of)	
)	
SYSTEM HEALTH PROVIDERS, INC.,)	
a corporation, and)	Docket No. C-
)	
GENESIS PHYSICIANS GROUP, INC.,)	
a corporation.)	
)	

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of certain acts and practices of System Health Providers, Inc. and Genesis Physicians Group, Inc., hereinafter sometimes referred to as “Respondents,” and Respondents having been furnished thereafter with a copy of the draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

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

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

1. Respondent System Health Providers, Inc. (“SHP”) is a for-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 12201 Merit Drive, Suite 450, Dallas, TX 75251.
2. Respondent Genesis Physicians Group, Inc. (“GPG”) is a non-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 12201 Merit Drive, Suite 440, Dallas, TX 75251.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

ORDER

I.

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

- A. “Respondent SHP” means System Health Providers, Inc., its officers, directors, employees, agents, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, representatives, successors, and assigns of each.
- B. “Respondent GPG” means Genesis Physicians Group, Inc. its officers, directors, employees, agents, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, representatives, successors, and assigns of each.
- C. “Respondents” means Respondent SHP and Respondent GPG.
- D. “Participate” in an entity means (1) to be a partner, shareholder, owner, member, or employee of such entity, or (2) to provide services, agree to provide services, or offer to provide services, to a

Payor through such entity. (This definition also applies to all tenses and forms of the word “participate,” including, but not limited to, “participating,” “participated,” and “participation.”)

- E. “Payor” means any Person that pays, or arranges for payment, for all or any part of any Provider services for itself or for any other Person.
- F. “Person” means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.
- G. “Preexisting Contract” means a contract that was in effect prior to the receipt, by all Payors that are parties to such contract, of notice sent by Respondent SHP or Respondent GPG pursuant to Paragraph III.B. of this Order, of each such Payor’s right to terminate such contract.
- H. “Principal Address” means either (1) primary business address, if there is a business address, or (2) primary residential address, if there is no business address.
- I. “Provider” means a doctor of allopathic medicine (“M.D.”), a doctor of osteopathic medicine (“D.O.”), or any other Person licensed by the state to provide ancillary health care services.
- J. “Qualified risk-sharing joint arrangement” means an arrangement to provide Provider services in which:
 - 1. all Providers who participate in the arrangement share substantial financial risk through their participation in the arrangement and thereby create incentives for the Providers who participate to jointly control costs and improve quality by managing the provision of Provider services, such as risk-sharing involving:
 - a. the provision of Provider services to Payors at a capitated rate,
 - b. the provision of Provider services for a predetermined percentage of premium or revenue from Payors,
 - c. the use of significant financial incentives (e.g., substantial withholds) for providers who participate to achieve, as a group, specified cost-containment goals, or
 - d. the provision of a complex or extended course of treatment that requires the substantial coordination of care by providers in different specialties offering a complementary mix of services, for a fixed, predetermined payment, where the costs of that course of treatment for any individual patient can vary greatly due to the individual patient’s condition, the choice, complexity, or length of treatment, or other factors; and

2. any agreement concerning reimbursement or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies through the joint arrangement.

K. “Qualified clinically-integrated joint arrangement” means an arrangement to provide Provider services in which:

1. all Providers who participate in the arrangement participate in active and ongoing programs of the arrangement to evaluate and modify the practice patterns of, and create a high degree of interdependence and cooperation among, the Providers who participate in the arrangement, in order to control costs and ensure the quality of services provided through the arrangement; and
2. any agreement concerning reimbursement or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies through the joint arrangement.

II.

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

- A. Entering into, adhering to, participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding between or among any Providers:
 1. to negotiate on behalf of any Provider with any Payor,
 2. to deal, refuse to deal, or threaten to refuse to deal with any Payor,
 3. regarding any term, condition, or requirement upon which any Provider deals, or is willing to deal, with any Payor, including, but not limited to, price terms, or
 4. not to deal individually with any Payor, or not to deal with any Payor through any arrangement other than Respondent SHP or other than Respondent GPG.

- B. Exchanging or facilitating in any manner the exchange or transfer of information among Providers concerning any Provider's willingness to deal with a Payor, or the terms or conditions, including price terms, on which the Provider is willing to deal;
- C. Attempting to engage in any action prohibited by Paragraph II.A. or II.B., above; and
- D. Encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any Person to engage in any action that would be prohibited by Paragraphs II.A. through II.C. above.

PROVIDED, HOWEVER, that nothing in this Paragraph II shall prohibit any agreement involving, or conduct by, Respondent SHP or Respondent GPG that is reasonably necessary to form, participate in, or take any other action in furtherance of a qualified risk-sharing joint arrangement or a qualified clinically-integrated joint arrangement, so long as the arrangement does not restrict the ability, or facilitate the refusal, of Providers who participate in it to deal with Payors on an individual basis or through any other arrangement.

III.

IT IS FURTHER ORDERED that Respondent SHP shall:

- A. Within thirty (30) days after the date on which this Order becomes final, distribute by first-class mail a copy of this Order and the Complaint to:
 - 1. each Provider who participates, or has participated, in Respondent SHP or Respondent GPG, and
 - 2. each officer, director, manager, and employee of Respondent SHP or Respondent GPG;
- B. Within thirty (30) days after the date on which this Order becomes final, send copies of this Order, the Complaint, and the notice specified in Appendix A to this Order, by first-class mail return receipt requested, to the chief executive officer of each Payor that is listed in Appendix B or that contracts with Respondent SHP or Respondent GPG for the provision of Provider services;
- C. Terminate, without penalty or charge, any Preexisting Contract with any Payor for the provision of Provider services, upon receipt by Respondent SHP or Respondent GPG of a written request to terminate such contract from any Payor that is a party to the contract or that pays for the Provider services provided through the contract; **PROVIDED, HOWEVER**, that nothing contained herein shall affect the operation of any Preexisting Contract provision pertaining to the continuation of patient care for patients undergoing a course of treatment, or payment therefor, following termination of the Preexisting Contract;

- D. For a period of three (3) years after the date this Order becomes final:
1. Distribute by first-class mail a copy of this Order and the Complaint to:
 - a. each Provider who begins participating in Respondent SHP or Respondent GPG, and who did not previously receive a copy of this Order and the Complaint from Respondent SHP or Respondent GPG, within thirty (30) days of the time that such participation begins,
 - b. each Payor that contracts with Respondent SHP or Respondent GPG for the provision of Provider services, and that did not previously receive a copy of this Order and the Complaint from Respondent SHP or Respondent GPG, within thirty (30) days of the time that such Payor enters into such contract, and
 - c. each person who becomes an officer, director, manager, and employee of Respondent SHP or Respondent GPG, and who did not previously receive a copy of this Order and the Complaint from Respondent SHP or Respondent GPG, within thirty (30) days of the time that he or she assumes such responsibility with Respondent SHP; and
 2. Annually publish in an official annual report or newsletter sent to all Providers who participate in Respondent SHP or Respondent GPG, a copy of this Order and the Complaint with such prominence as is given to regularly featured articles;
- E. Notify the Commission at least thirty (30) days prior to any proposed change in Respondent SHP or Respondent GPG, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in Respondent SHP or Respondent GPG that may affect compliance obligations arising out of this Order; and
- F. File verified written reports within sixty (60) days after the date this Order becomes final, annually thereafter for three (3) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may by written notice require, setting forth:
1. in detail, the manner and form in which Respondent SHP and Respondent GPG have complied and are complying with this Order, including, but not limited to, (a) information sufficient to describe, for each qualified risk-sharing joint arrangement established or operated by Respondent SHP or Respondent GPG, the manner in which the Providers who participate in such arrangement share financial risk, and (b) information sufficient to describe, for each qualified clinically-integrated joint arrangement established or operated by Respondent SHP or Respondent GPG, the manner in which the Providers who participate in such arrangement have integrated their practices, and

2. the name, address, and telephone number of each Payor with which Respondent SHP or Respondent GPG has had any contact during the reporting period.

IV.

IT IS FURTHER ORDERED that each Respondent shall notify the Commission of any change in its Principal Address within twenty (20) days of such change in address.

V.

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

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

VI.

IT IS FURTHER ORDERED that this Order shall terminate twenty (20) years from the date of issuance.

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED:

Appendix A
[letterhead of SHP/GPG]

[name of payor's CEO]
[address]

Dear _____:

Enclosed is a copy of a complaint and a consent order issued by the Federal Trade Commission against System Health Providers, Inc. ("SHP") and Genesis Physicians Group, Inc. ("GPG"). I call to your attention Paragraph III.C. of the order, which gives you the right to terminate, without penalty or charge, any contracts with SHP or GPG that were in effect prior to your receipt of this letter.

Sincerely,

Appendix B

Aetna U.S. Healthcare North Texas, Inc.

Beech Street Corp.

Blue Cross Blue Shield of Texas, A Division of Health Care Service Corp.

Cigna Healthcare of Texas, Inc.

First Health Group Corp.

HealthSmart Preferred Care, Inc.

Humana Health Plan of Texas, Inc.

IMS Managed Care, Inc.

Pacificare of Texas, Inc.

Private Healthcare Systems, Inc.

ProAmerica Managed Care, Inc.

Regional Healthcare Alliance

United Healthcare of Texas, Inc.