

**JOINT FTC/DOJ HEARINGS ON HEALTH  
CARE AND COMPETITION LAW AND  
POLICY**

**PHYSICIAN IPAS: MESSENGER MODEL**

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# HYPOTHETICAL PHYSICIAN NETWORK STRUCTURE

- Network formed as an L.L.C. to provide three types of services:
  - Serve as exclusive contracting agent for certain fully-integrated, non-competing specialty physician practice groups (Division A providers)
  - Serve as the contracting agent, via a messenger model, for certain competing physician groups (Division B providers)
  - Provide MSO-type services to Division A and B providers, as well as other providers for whom the Network does not serve as contracting agent

# DIVISION A PROVIDERS AND WHAT THE NETWORK DOES FOR THEM

- Division A providers are individual physicians or fully-integrated practice groups that practice in a specialty area
- Division A providers or groups do not compete with each other in a “material” way
- Division A providers must execute “exclusive contracting agreement,” authorizing Network to be their sole agent for negotiating non-financial and financial contract terms with managed care payors
- Division A providers cannot negotiate independently with payors

# **SPECIALTIES INCLUDED IN DIVISION A**

- Internists
- Orthopedic Surgeons
- Neurosurgeons
- General Surgeons
- ENTs
- Urologists
- Nephrologists
- Vascular specialists
- Urological Surgeons
- Cardiologists
- Pulmonary and sleep specialists
- Pediatric General Surgeons
- Pediatric Orthopedic Surgeons
- Pediatric Pulmonologists
- Children's Surgeons
- Hem-Oncs

# DIVISION B PROVIDERS AND WHAT THE NETWORK DOES FOR THEM

- Division B providers include specialists who compete with Division A providers as well as with other Division B providers
- Division B providers enter into a non-exclusive contract with the Network authorizing the Network to serve as their “messenger” for purposes of contracting with managed care payors

# **OPTIONAL NETWORK MSO-TYPE SERVICES OFFERED (\*) OR IN DEVELOPMENT (+)**

- Group purchasing of malpractice insurance\*
- Shared management activities\*
- Integrated information system+
- Corporate compliance program, including HIPAA\*
- Clinical pathway/medical management+
- Practice management services\*
- Shared office locations+
- Community education sponsorship\*
- Practice outreach activities\*

# **NETWORK MSO-TYPE SERVICES UNDER CONSIDERATION**

- Financial accounting, analysis, reporting, and planning
- Billing and collections
- Group purchasing of products and services
- Utilization review
- Risk management
- Claims administration/management
- Credentialing
- Information systems and technology

# DIVISION B PROVIDERS

- Plastic surgeons
- Colo-rectal surgeons
- General surgeons
- Cardiothoracic surgeons



# THE NETWORK'S OPERATION

- On behalf of Division A providers, Network attempts to negotiate non-price terms with payor
- If Network and payor are unable to agree on non-price terms, all contract negotiations are terminated (with no consideration of price terms) and Division A providers cannot participate on payor's panel
- If Network and payor agree on non-price terms, Network attempts to negotiate price terms with payor
- If Network and payor unable to agree on price terms, all contract negotiations are terminated and Division A providers cannot participate on payor's panel

# THE PROBLEM

- Payor seeks to contract with Network's providers, both Division A and Division B providers
- Network declines to negotiate "price" terms with payor on behalf of Division A providers until agreement reached on non-price terms
- Network declines to messenger payor's contract proposal (including both non-price and price terms) to Division B providers until contract executed with Network's Division A providers

# THE ISSUE

- Does the conduct of the Network and its providers, both Division A and B, constitute a per se unlawful concerted refusal to deal or boycott in violation of federal antitrust laws?
- If not per se unlawful conduct, under what circumstances would it be a violation?