



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

December 21, 2005

Richard A. Feinstein, Esquire  
Boies, Schiller & Flexner LLP  
5301 Wisconsin Avenue, NW  
Washington, D.C. 20015

Re: *Gregory A. Brodek, Esquire*, FTC File No. 031 0205

Dear Mr. Feinstein:

The Federal Trade Commission conducted an investigation of Gregory A. Brodek, Esquire, to determine whether he violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, through his alleged role in the conduct of the Maine Health Alliance to restrain competition among the rival hospitals and rival doctors who composed the membership of the Alliance. The Commission resolved the Alliance matter by consent order. *The Maine Health Alliance and William R. Diggins*, Dkt. No. C-4095 (Aug. 29, 2003) (consent order).

Non-physician agents who facilitate anticompetitive conduct on behalf of their physician organization clients may be subject to antitrust liability. See, e.g., *The Maine Health Alliance* (Respondent Diggins); *White Sands Health Care System, L.L.C.*, et al., Dkt. No. C-4130 (Jan. 11, 2005) (consent order); *Physician Integrated Servs. of Denver, Inc.*, Dkt. No. 4054 (July 16, 2002) (consent order); and *Aurora Associated Primary Care Physicians, L.L.C.*, Dkt. No. 4055 (July 16, 2002) (consent order). The Commission's investigation of Mr. Brodek focused on the extent of his role, while he served as an attorney for the Alliance, in the formulation of the Alliance's contracting policy and in negotiation of price and other competitively significant terms with third party payers on behalf of the Alliance and its members.

It appears that no further action is warranted at this time. Accordingly, the investigation has been closed. While the Commission has reached this conclusion, this action is not to be construed as a determination that a violation has not occurred, just as the pendency of an investigation should not be construed as a determination that a violation has occurred. The Commission reserves the right to take such further action as the public interest may require.

By direction of the Commission, Chairman Majoras recused.

Donald S. Clark  
Secretary