

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

IN THE MATTER OF SOUTH GEORGIA HEALTH PARTNERS, L.L.C.,
ET AL.

FTC File No. 011-0222

COMMENTS OF CITIZENS FOR VOLUNTARY TRADE

Proposed Consent Order Announced September 9, 2003
Comments Filed October 8, 2003

Pursuant to the FTC's publication of a proposed consent agreement in the above-captioned matter¹, Citizens for Voluntary Trade, a Virginia nonprofit corporation, files the following comments.

I

South Georgia Health Partners, L.L.C. (SGHP) is a for-profit physician-hospital organization (PHO) composed of five smaller PHOs with a combined total of 15 hospitals and approximately 500 physicians doing business in South Georgia. SGHP also includes three independent physician associations (IPAs) whose members are affiliated with one of the component PHOs.

The FTC's complaint details SGHP's efforts to jointly contract with third-party payors since 1995. The complaint alleges numerous contracts negotiated between SGHP and payors violated section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, because SGHP's actions "maintain[ed] artificially higher prices" for physician and hospital services. The complaint further alleges SGHP's members did not promote "any efficiency-enhancing integration sufficient to justify" that would justify joint contracting.

Consequently, the proposed consent order forbids SGHP from joint contracting in the future absent an accompanying FTC-

¹ 68 Fed. Reg. 54,456-54,458 (September 17, 2003).

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approved form of “risk sharing”. The proposed order will continue in force for twenty years, but in light of the FTC’s restrictions on SGHP’s business practices, the group announced it will cease all operations by the end of this year.²

II

This is the 14th FTC settlement with a physician or physician-hospital organization concluded by the Commission since President Bush took office in 2001.³ CVT previously filed comments in opposition to many of these settlements, the most recent regarding the Maine Health Alliance.⁴ Since there are common constitutional and policy issues in these settlements, CVT reaffirms and reincorporates its previous comments as they relate to SGHP.

III

The FTC’s complaint charges SGHP with various “restraints of trade.” This is a false charge, albeit one consistent with the Commission’s recent pattern of attacking physicians (and other service providers) for engaging in legitimate trade with payors. The FTC’s goal in prosecuting SGHP, as with the other groups, is to deprive physicians of any economic power in the marketplace. The FTC claims physicians may negotiate with payors individually, but this will not be the case under the proposed order. Any SGHP physician that individually rejects a payor’s offer from hereon out will come under immediate suspicion of “colluding” with other physicians to raise prices. The only safe course of action for any physician to take will be to accept a payor’s offer, even if it offers a below-market price and will render the physician’s services unprofitable.

The FTC has no understanding of what constitutes a market price. In the Commission’s view, a market price is whatever a consumer is willing to offer; the producer’s needs and interests are irrelevant. But in our view—that is, a capitalist view—a market price requires negotiation between buyers and sellers.

² Collier, Karen. “FTC Orders Health Group Closure,” WALB News 10, September 10, 2003. <http://www.walb.com/Global/story.asp?S=1437545&nav=5kZQHvOR>.

³ A 15th settlement, with a physician group in Yakima, Wash., was concluded after this consent order was announced.

⁴ Comments of Citizens for Voluntary Trade, In the Matter of the Maine Health Alliance and William R. Diggins, FTC File No. 021-0017, August 18, 2003. http://www.voluntarytrade.org/FTC_Cases/Maine_Health/MHA_Comments.pdf.

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This is true whether buyers act alone or in a group, and whether sellers act alone or in a group. The FTC, in contrast, seeks a one-sided process where buyers may act together (as they have in this case) but sellers are forced to compete against one another to the point of financial insolvency.

The FTC's position in this case implies that physicians are the primary cause of high healthcare costs for south Georgia consumers. This is nothing more than scapegoating. Rising healthcare costs can be attributed to many factors that have nothing to do with joint contracting activity by physicians. First and foremost, state and federal intervention in the healthcare market increase costs. According to a National Review Online article, "a recent study suggests that in some states, [government] mandates account for 40 percent of health-insurance costs."⁵ These mandates require insurers to cover all persons who apply, many classes of diseases that require expensive treatment, and requirements that prices be based on age rather than health. All of these mandates distort the market's ability to determine a fair price, yet the FTC has taken no action to address these sources of consumer harm.

If anything, joint contracting activities like those of SGHP help contain price increases by permitting physicians (and hospitals) to coordinate the administrative costs of dealing with payors. The FTC doesn't deny this, but argues that these benefits can be achieved without joint negotiations over prices, or even sharing price information among physicians. This is utter nonsense. Not only does the FTC lack the constitutional authority to restrict the flow of commercial information (that damn First Amendment!), this "forced ignorance" market model does nothing to benefit consumers. In any well functioning market, producers know what their competitors charge. Without that information, they would have no idea how to price their own products and services in response to consumer demand. Merely possessing a competitor's price information is not a crime, even under the antitrust laws, except apparently in physician markets controlled by arbitrary FTC consent orders. The only effect of forced ignorance is to guarantee physicians possess no ability to effectively negotiate with payors.

⁵ Gratzner, David. "Insuring America," National Review Online, October 6, 2003, 9:38 a.m. <http://nationalreview.com/comment/gratzner200310060938.asp>.

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IV

It's unclear whether the FTC has considered the long-term ramifications of its policy. Because this consent order focuses on preventing short-term price increases, we can't say for sure that the Commission understands how the south Georgia marketplace will be affected five, ten, or even 20 years from now. This despite the fact the consent order will remain in effect for 20 years. The Commission presents no evidence or data to predict changes to the marketplace over time, yet the public is expected to accept the FTC's jurisdiction over the market until at least 2023.

This might make sense if the consent order imposed a duty on the Commission to periodically report on the status of the market, but as things stand, the only required reports are those SGHP must make demonstrating compliance with the order. The public, unfortunately, is not afforded a similar level of accountability from the FTC. We suspect the Commission has no interest whatsoever in honestly assessing the impact of this consent order, since the principal objective of this case was preventing short-term price increases for payors.

V

For the reasons discussed above, and those stated in previous comments we have filed, Citizens for Voluntary Trade requests the FTC reject entry of the proposed order and dismiss the complaint against SGHP.

Respectfully Submitted,
CITIZENS FOR VOLUNTARY TRADE

S.M. Oliva
President
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Arlington, VA 22210
(571) 242-1766

Dated: October 9, 2003



VIA OVERNIGHT MAIL

October 7, 2003



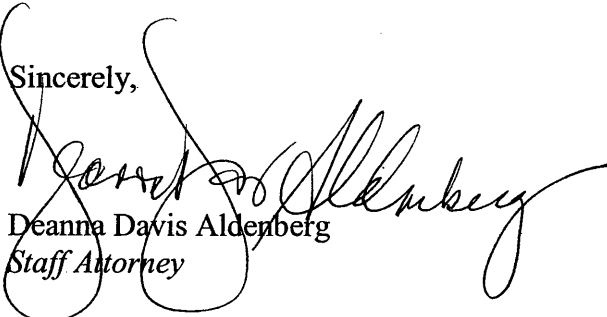
FTC
Office of the Secretary
600 Pennsylvania Avenue, NW
Washington, DC 20580

RE: Comments on the Proposed Settlement with South Georgia Health Partners

To Whom It May Concern:

Private Healthcare Systems (PHCS) has reviewed all information presented by the FTC against South Georgia Health Partner (SGHP) and believes this will lessen the anti-competitive behavior in the market.

Sincerely,


Deanna Davis Aldenberg
Staff Attorney



Utilization
Management
May 2001
★
Credentiaing
August 2001



ACCREDITED
Health Utilization
Management
July 1999
★
Health Network
with Credentiaing
October 2001