

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Deborah Platt Majoras, Chairman
Pamela Jones Harbour
Jon Leibowitz
William E. Kovacic
J. Thomas Rosch

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In the Matter of)
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Advocate Health Partners,)
a corporation,)
Advocate Bethany Health Partners,)
a corporation,)
Advocate Christ Hospital Health Partners,)
a corporation,)
Advocate Good Samaritan Health Partners, Ltd.,)
a corporation,)
Advocate Good Shepherd Health Partners, Ltd.,)
a corporation,)
Advocate Health Centers, Inc.,)
a corporation,)
Advocate Illinois Masonic Health Partners,)
a corporation,)
Advocate Lutheran General Health Partners, Inc.,)
a corporation,)
Advocate-South Suburban Health Partners,)
a corporation,)
Advocate Trinity Health Partners,)
a corporation, and)
Dreyer Clinic, Inc.,)
a corporation.)
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Docket No. C-

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 Respondent Advocate Health Partners (“Respondent AHP” or “AHP”); Respondents Advocate Bethany Health Partners, Advocate Christ Hospital Health Partners, Advocate Good Samaritan Health Partners, Ltd., Advocate Good Shepherd Health Partners, Ltd., Advocate Illinois Masonic Health Partners, Advocate Lutheran General Health Partners, Inc., Advocate-South Suburban Health Partners, Advocate Trinity Health Partners (the “PHO Respondents”); and Advocate Health Centers, Inc.

and Dreyer Clinic, Inc. (the “Advocate System Respondents”), hereinafter referred to collectively as “Respondents,” have 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 action challenges horizontal agreements to fix prices, engage in collective bargaining, and refuse to deal individually with health plans by competing independent physicians and physician practice groups that account for over 2,900 physicians in the Chicago metropolitan area (“Advocate Physicians”). Respondent AHP and the PHO Respondents orchestrated and carried out these illegal agreements, and the Advocate System Respondents participated in these illegal agreements, which had no legitimate justification.

RESPONDENTS

A. Respondent AHP

2. Respondent AHP is a not-for-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal address at 1661 Feehanville, Suite 200, Mount Prospect, IL 60058.

3. AHP is a type of organization commonly referred to in the health-care industry as a “super physician-hospital organization” because its members consist of multiple physician-hospital organizations (“PHOs”). AHP’s members include each of the PHO Respondents and Advocate Health Care Network, a not-for-profit hospital system that operates eight general acute-care hospitals in the Chicago metropolitan area.

B. The PHO Respondents

4. Each of the following eight PHO Respondents is a physician-hospital organization operating at one of the eight Advocate Health Care Network hospitals. Each PHO Respondent has as its members a non-profit hospital subsidiary of Advocate Health Care Network and a number of physicians who have medical-staff privileges at the respective Advocate Health Care Network hospital.

- a. Respondent Advocate Bethany Health Partners is a not-for-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal address at 1661 Feehanville, Suite 200, Mount Prospect, IL 60058. Approximately 65 physicians with medical-staff privileges at Advocate Bethany Hospital are members of Advocate Bethany Health Partners.
- b. Respondent Advocate Christ Hospital Health Partners is a not-for-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal address at 1661 Feehanville, Suite 200, Mount Prospect, IL 60058. Approximately 560

physicians with medical-staff privileges at Advocate Christ Medical Center are members of Advocate Christ Hospital Health Partners.

- c. Respondent Advocate Good Samaritan Health Partners, Ltd. is a for-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal address at 1661 Feehanville, Suite 200, Mount Prospect, IL 60058. Approximately 315 physicians with medical-staff privileges at Advocate Good Samaritan Hospital are members of Advocate Good Samaritan Health Partners, Ltd.
- d. Respondent Advocate Good Shepherd Health Partners, Ltd. is a not-for-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal address at 1661 Feehanville, Suite 200, Mount Prospect, IL 60058. Approximately 300 physicians with medical-staff privileges at Advocate Good Shepherd Hospital are members of Advocate Good Shepherd Health Partners, Ltd.
- e. Respondent Advocate Illinois Masonic Health Partners is a not-for-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal address at 1661 Feehanville, Suite 200, Mount Prospect, IL 60058. Approximately 375 physicians with medical-staff privileges at Advocate Illinois Masonic Medical Center are members of Advocate Illinois Masonic Health Partners.
- f. Respondent Advocate Lutheran General Health Partners, Inc. is a not-for-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal address at 1661 Feehanville, Suite 200, Mount Prospect, IL 60058. Approximately 615 physicians with medical-staff privileges at Advocate Lutheran General Hospital are members of Advocate Lutheran General Health Partners, Inc.
- g. Respondent Advocate South-Suburban Health Partners is a not-for-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal address at 1661 Feehanville, Suite 200, Mount Prospect, IL 60058. Approximately 215 physicians with medical-staff privileges at Advocate South Suburban Hospital are members of Advocate South-Suburban Health Partners.
- h. Respondent Advocate Trinity Health Partners is a not-for-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal address at 1661 Feehanville, Suite 200, Mount Prospect, IL 60058. Approximately 160 physicians with medical-staff privileges at Advocate Trinity Hospital are members of Advocate Trinity Health Partners.

C. The Advocate System Respondents

5. Respondent Advocate Health Centers, Inc. is a for-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal address at 2545 S. Dr. Martin Luther King Drive, Chicago, IL 60616. It is a for-profit subsidiary of a for-profit subsidiary of Advocate Health Care Network and employs approximately 165 physicians. Respondent Advocate Health Centers, Inc. participated in the illegal conduct alleged herein by utilizing Respondent AHP to negotiate contract terms for the services of its employed physicians jointly with the independent-physician members of the PHO Respondents, with whom Advocate Health Centers, Inc. otherwise competes.

6. Respondent Dreyer Clinic, Inc. is a for-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal address at 1877 West Downer Place, Aurora, IL 60506. It is a for-profit subsidiary of a for-profit subsidiary of Advocate Health Care Network corporation and contracts with payors to provide physician services. Respondent Dreyer Clinic, Inc. participated in the illegal conduct alleged herein by utilizing Respondent AHP to negotiate contract terms for the services of physicians affiliated with Dreyer Clinic, Inc. jointly with the independent-physician members of the PHO Respondents, with whom Dreyer Clinic, Inc. otherwise competes.

JURISDICTION

7. Respondent AHP is a corporation within the meaning of Section 4 of the FTC Act. At all relevant times, AHP engaged in substantial activities, including the contract negotiations described herein, for the pecuniary benefit of independent, profit-seeking physicians who were members of the PHO Respondents, which, in turn, were members of AHP.

8. The physician members of the PHO Respondents are members of AHP within the meaning of Section 4 of the Federal Trade Commission Act. AHP is governed by a Board of Directors that includes physicians elected by and from the physician members of the PHO Respondents. AHP committees, including the committee that makes contracting decisions on behalf of physicians, include physician representatives of the PHO Respondents' physician members. AHP's operations are funded in substantial part by the PHO Respondents, which are funded in substantial part by the PHO Respondents' member physicians. AHP regularly and in the ordinary course of business refers to these physicians as "members" of AHP.

9. The PHO Respondents are corporations within the meaning of Section 4 of the FTC Act. At all relevant times, the PHO Respondents engaged in substantial activities for the pecuniary benefit of their member physicians, a substantial majority of whom are independent, profit-seeking physicians.

10. Respondent Good Samaritan Health Partners, Ltd. and the Advocate System Respondents are for-profit corporations and, therefore, corporations within the meaning of Section 4 of the Federal Trade Commission Act.

11. The general business practices of all Respondents, 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

12. Physicians often contract with health plans and other third-party payors (“payors”) to establish the terms and conditions, including price terms, under which they render physician services to the payors’ enrollees. Physicians entering into such contracts often agree to lower compensation to obtain access to additional patients made available by the payors’ relationships with enrollees. These contracts may reduce payors’ costs and enable them to lower the price of insurance, and thereby result in lower medical-care costs for enrollees.

13. Absent agreements among competing physicians on the prices and other terms on which they will provide services to payors’ enrollees, competing physicians decide unilaterally whether to participate in payors’ provider networks based on the terms and conditions, including price, offered by the payors. Competition among physicians generally results in lower prices to the individuals enrolled in health-insurance plans.

ANTICOMPETITIVE CONDUCT

14. AHP and the PHO Respondents, acting as a combination of their physician members and the Advocate System Respondents, and in conspiracy with them, have acted to restrain competition by, among other things, facilitating, entering into, and implementing agreements, express or implied, to fix the fee-for-service prices and other terms on which their physician members and the Advocate System Respondents would contract with payors; to engage in collective bargaining on behalf of their physician members and the Advocate System Respondents over terms and conditions of dealing with payors; and to refrain from negotiating individually with payors. Except to the extent that competition has been restrained as alleged herein, a substantial majority of those physicians have been, and are now, in competition with each other.

A. Respondents’ Contracting Process

15. AHP’s contracting activity is controlled by the PHO Respondents and the Advocate System Respondents and, ultimately, by otherwise competing physicians. As corporate members of AHP, each PHO Respondent and each Advocate System Respondent holds a seat on AHP’s Board of Directors. Each PHO Respondent, in turn, is controlled by a Board of Directors that includes physicians elected by and from the PHO Respondent’s physician members.

16. From 1995 through 2000, each PHO Respondent negotiated through AHP and made contracting decisions collectively on behalf of its respective physician members. Each PHO Respondent’s Board of Directors established a minimum acceptable rate for fee-for-service contracts and communicated that rate to AHP.

17. Utilizing those rates, AHP negotiated rates and other terms with payors collectively on behalf of each PHO Respondent’s physicians and, at times, collectively on behalf of all Advocate Physicians.

18. After AHP reached an agreement on the price and other terms of the contract, the contract was transmitted to each PHO Respondent’s Board of Directors, which had the authority to accept or reject the contract or to make a counteroffer. If a PHO Respondent’s Board of

Directors accepted a payor's contract, AHP would execute the contract. AHP or the PHO Respondent would then, for the first time, transmit the contract to the PHO Respondent's physician members, who could opt in or opt out of the contract. AHP did not transmit to individual physicians any rates proposed by the payors during negotiations, and transmitted only the rates that their PHO Board of Directors approved.

19. From 1995 through 2000, AHP negotiated contracts with at least 16 payors using this process.

20. Effective January 1, 2001, AHP restructured its operations and assumed complete responsibility for contracting on behalf of each PHO Respondent and its physician members and, at times, the Advocate System Respondents. As part of this reorganization, AHP established a centralized Contract and Finance Committee to oversee contracting activity. The Contract and Finance Committee was comprised of physician representatives from each of the eight PHO Respondents, a representative from each Advocate System Respondent, and a representative from Advocate Health Care Network hospital system.

21. The Contract and Finance Committee's responsibilities included developing and approving physician contracting strategies and terms acceptable to the group as a whole—*i.e.*, collectively acceptable to the PHO Respondents, acting on behalf of their physician members; the Advocate System Respondents; and Advocate Health Care Network. In order to establish minimum acceptable reimbursement rates, the Contract and Finance Committee requested and received input from each PHO's Board of Directors as to its minimum acceptable rate for physician fees. Based on this input, the Contract and Finance Committee established a single benchmark for the entire group that was higher than the minimum rate that some PHO Boards of Directors were willing to accept. The Contract and Finance Committee was also responsible for authorizing AHP staff to finalize contracts that met those terms.

22. In carrying out its responsibilities, the Contract and Finance Committee reviewed contract proposals, decided whether to submit counterproposals to payors, and made decisions collectively on behalf of the over 2,900 Advocate Physicians about whether to accept or reject price and other contract terms offered by payors. Once the Contract and Finance Committee accepted a contract offer, AHP executed the contract. AHP would then transmit the contract to the PHO Respondents' physician members, who could opt in or opt out of the contract. AHP did not transmit any rates proposed by the payors during negotiations, and transmitted only the rates that the Contract and Finance Committee approved.

23. From 2001 through 2004, AHP negotiated contracts with at least 12 payors using this process.

B. Advocate Physicians' Refusal to Deal with Blue Cross Blue Shield of Illinois ("Blue Cross")

24. In December 2001, AHP identified Blue Cross as a target for negotiating a group contract. At the time, Blue Cross held individual contracts with the majority of the Advocate Physicians at rates that were lower than AHP typically had been able to negotiate by bargaining collectively with other payors.

25. In early 2002, AHP began developing a strategy for negotiating a group contract with Blue Cross that would result in higher rates than the physicians would otherwise receive through their individual contracts. In publicizing this strategy to the physicians, AHP noted that “a major part of [AHP’s] value has been your access to the favorable rates negotiated by AHP for many of your fee-for-service contracts” and that “Advocate fully expects to negotiate rate increases that will bring reimbursement levels for [Blue Cross] products closer to reasonable market rates.”

26. In order to pursue its strategy, AHP solicited from all Advocate Physicians, and obtained from more than 1,700 of them, what AHP termed “Agency Agreements.” The Agency Agreements authorized AHP to act as the physicians’ agent in the negotiations with Blue Cross and permitted AHP to terminate and collectively renegotiate the physicians’ existing individual contracts with Blue Cross.

27. When some physicians attempted to rescind their Agency Agreements, AHP’s President instructed AHP staff in an internal e-mail to inform the physicians “that if they rescind there is no hope of getting increases going forward and it will impact everyone’s ability to get increases from other payors as [other payors] won’t be able to compete” with Blue Cross.

28. On October 1, 2002, AHP terminated, effective January 1, 2003, Blue Cross’s individual contracts with the over 1,700 physicians who signed the Agency Agreements and attempted to negotiate a group contract on their behalf.

29. In response to this mass termination, Blue Cross filed a lawsuit against AHP, alleging price fixing, group boycott, and various other claims. After extensive negotiations, and while an investigation of AHP by the Office of the Attorney General of Illinois was pending, the parties settled their dispute. AHP dropped its efforts to negotiate a group contract on behalf of its 1,700 physicians, Blue Cross dismissed its lawsuit, and Blue Cross agreed to make certain payments to AHP.

30. Although the parties’ agreement specified that Blue Cross’s payments to AHP were to “encourage outcome-based reimbursement” and to support efforts to implement electronic-claim-submission capabilities for all AHP physicians, AHP distributed the money only to physicians who signed the Agency Agreements.

C. Negotiations with United Healthcare of Illinois, Inc. (“United”)

31. Shortly after the Contract and Finance Committee was formed, in April 2001, it began planning AHP’s strategy for negotiations with United. According to internal AHP documents, AHP’s goals included “standardiz[ation] of fee schedule[s] across all physician groups and PHOs.” After receiving input from each PHO’s Board of Directors as to its minimum acceptable rate for physician fees, the Contract and Finance Committee established a single benchmark for the entire group and voted to terminate AHP’s existing contract with United if United’s offer did not satisfy the benchmark.

32. On June 5, 2001, AHP staff met with United and presented “a proposal for physician services based upon the recommendation of the [Contract and Finance Committee].”

United told AHP that the proposal was “significantly over market” and made no counteroffer. On June 15, 2001, AHP terminated United’s physician and hospital contracts.

33. United continued to negotiate with AHP over hospital rates, but it solicited individual contracts from Advocate Physicians. In response, AHP threatened that United would not be able to contract for hospital services unless it ceased its efforts to contract individually with Advocate Physicians and agreed to a group contract with an increase in physician fees.

34. In August 2001, United agreed to a group contract with a physician fee increase. The fees were approximately 20 percent to 30 percent higher than United’s direct contracts with individual doctors in the Chicago area.

RESPONDENTS’ CONDUCT IS NOT JUSTIFIED

35. With respect to the acts and practices described in paragraphs 15 through 34, the Advocate Physicians did not integrate their practices in any economically significant way, nor did they create efficiencies sufficient to justify their acts or practices described in the foregoing paragraphs.

RESPONDENTS’ ACTIONS HAVE HAD SUBSTANTIAL ANTICOMPETITIVE EFFECTS

36. Respondents’ actions have had, or tend to have had, the effect of unreasonably restraining trade and hindering competition in the provision of physician services in the Chicago metropolitan area in the following ways, among others:

- a. Unreasonably restraining price and other forms of competition among physicians;
- b. Increasing prices for physician services; and
- c. Depriving health plans, employers, and individual consumers of the benefits of competition among physicians.

VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

37. 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 _____, 2007, issues its Complaint against Respondents.

By the Commission.

Donald S. Clark
Secretary

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