

IN THE MATTER OF

PHYSICIANS GROUP, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3610. Complaint, Aug. 11, 1995--Decision, Aug. 11, 1995*

This consent order prohibits, among other things, a Virginia physicians' group, and its seven board members from attempting to engage in an agreement or agreeing with other physicians to negotiate or refuse to negotiate with a third party payor. In addition, it requires dissolution of the group within 120 days.

Appearances

For the Commission: *Mark J. Horoschak, Rendell A. Davis and William Baer.*

For the respondents: *Heman A. Marshall, Francis Casola and Michael Urbanski, Woods, Rogers & Hazelgrove, Roanoke, VA.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the respondents named in the caption hereof have violated and are violating the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Physicians Group, Inc. ("respondent PGI") is a non-stock corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal place of business in Danville, Virginia. For purposes of this proceeding, its address is c/o Dr. Edwin Harvie, Jr., 101 Holbrook Street, Danville, Virginia.

PAR. 2. The individual respondents named in the caption above (hereinafter "physician respondents") are the members of the Board of Directors of respondent PGI, are physicians licensed to practice

medicine in the Commonwealth of Virginia, and are engaged in the business of providing physician services to patients for a fee in Pittsylvania County and Danville, Virginia. Their respective business addresses are as follows:

Edwin J. Harvie, Jr., M.D., Internal Medicine Associates, Ltd.,
101 Holbrook Street, Danville, Virginia;

Eric N. Davidson, M.D., Piedmont Internal Medicine, Inc., 125
Executive Drive, Suite H, Danville, Virginia;

Milton Greenberg, M.D., 171 South Main Street, Danville,
Virginia;

Noah F. Gibson, IV, M.D., 181 North Main Street, Danville,
Virginia;

William W. Henderson, IV, M.D., Danville Pulmonary Clinic,
Inc., 110 Exchange Street, Suite G, Danville, Virginia;

Douglas W. Shiflett, M.D., Internal Medicine Associates, Ltd.,
101 Holbrook Street, Danville, Virginia; and

Lawrence G. Fehrenbaker, M.D., Danville Urologic Clinic, P.O.
Box 1360, Danville, Virginia.

PAR. 3. The acts and practices of respondent PGI and the physician respondents, including those herein alleged, are in or affect commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

PAR. 4. Except to the extent that competition has been restrained as alleged herein, and except to the extent that physician respondents Edwin J. Harvie, Jr. and Douglas W. Shiflett practice together in Internal Medicine Associates, Ltd., the physician respondents have been, and are now, in competition among themselves and with other providers of physician services in Pittsylvania County and Danville, Virginia.

PAR. 5. Physicians often contract with health insurance firms and other third-party payors. Such contracts typically establish the terms and conditions under which the physicians will render services to the subscribers of the third-party payors, including terms and conditions of physician reimbursement and of cost containment. Among such terms and conditions of cost containment are procedures for reviewing the utilization of medical resources by participating physicians and for dealing with physicians who have over utilized. By employing such methods of cost containment, third-party payors

are often able to reduce the cost of medical care for their subscribers. The aggressive use of such cost containment methods can be described as "managed care."

PAR. 6. Absent agreements among competing physicians on the terms upon which they will deal with third-party payors, competing physicians each decide individually whether to enter into contracts with third-party payors and on the terms and conditions under which they are willing to enter into such contracts.

PAR. 7. All members of respondent PGI are physicians practicing in Pittsylvania County and Danville, Virginia. Respondent PGI was formed in February 1986 as a vehicle for its members to deal concertedly with the entry into Pittsylvania County and Danville, Virginia, of managed care. The physician respondents and other PGI members agreed that respondent PGI would represent them in negotiations with third-party payors. Respondent PGI exists in substantial part for the pecuniary benefit of its members.

PAR. 8. The members of PGI have not integrated their medical practices in any economically significant way, nor have they created any efficiencies that might justify their agreement to act collectively with respect to third-party payors.

PAR. 9. In engaging in the conduct described in paragraphs ten through fourteen below, respondent PGI has acted as a combination of its members and has conspired with at least some of its members.

PAR. 10. Beginning in 1986, and continuing to the present, respondent PGI and the physician respondents have conspired to prevent or delay the entry into Pittsylvania County and Danville, Virginia, of third-party payors, to deal concertedly with third-party payors, and to resist the cost containment measures of third-party payors.

PAR. 11. In 1988 and 1989, respondent PGI and the physician respondents conspired to fix the rate of reimbursement they were willing to accept from the Virginia Health Network, a managed care organization. As a result, the Virginia Health Network was not able to establish a network of health care providers in Pittsylvania County and Danville, Virginia.

PAR. 12. In 1992 and 1993, respondent PGI and the physician respondents conspired to fix the terms and conditions of cost containment they were willing to accept from the Key Advantage Plan, a managed care insurance plan for employees of the Commonwealth of Virginia. As a result, the Commonwealth of

Virginia was not able until 1994 to fully implement the Key Advantage Plan in Pittsylvania County and Danville, Virginia.

PAR. 13. Beginning in 1986 and continuing to the present, respondent PGI and the physician respondents have conspired to refuse to deal with, and to fix the terms and conditions of dealing with, other third-party payors attempting to do business in Pittsylvania County and Danville, Virginia.

PAR. 14. The acts and practices of respondent PGI and the physician respondents, as herein alleged, have had the purpose, tendency, and capacity to result in the following effects:

A. Restraining competition among physicians in Pittsylvania County and Danville, Virginia;

B. Depriving consumers in Pittsylvania County and Danville, Virginia, of the benefits of competition among physicians;

C. Fixing or increasing the prices that are paid for physician services in Pittsylvania County and Danville, Virginia;

D. Fixing the terms and conditions upon which physicians in Pittsylvania County and Danville, Virginia, would deal with third-party payors, including, but not limited to, terms and conditions of cost containment, and thereby raising the price to consumers of insurance coverage issued by third-party payors; and

E. Depriving consumers in Pittsylvania County and Danville, Virginia, of the benefits of managed care.

PAR. 15. The combination or conspiracy and the acts and practices of respondent PGI and the physician respondents, as herein alleged, constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. The violation or the effects thereof, as herein alleged, are continuing and will continue or recur in the absence of the relief herein requested.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and

which, if issued by the Commission would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that signing of said 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 the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comment filed thereafter by an interested person pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Physicians Group, Inc. is a non-stock corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal place of business in Danville, Virginia. For purposes of this order, its address is Physicians Group, Inc., c/o Dr. Edwin J. Harvie, Jr., 101 Holbrook Street, Danville, Virginia.

The individual respondents named in the caption above are the members of the board of directors of respondent Physicians Group, Inc. Their respective business addresses are as follows:

Edwin J. Harvie, Jr., M.D., Internal Medicine Associates, Ltd.,
101 Holbrook Street, Danville, Virginia;

Eric N. Davidson, M.D., Piedmont Internal Medicine, Inc., 125
Executive Drive, Suite H, Danville, Virginia;

Milton Greenberg, M.D., 171 South Main Street, Danville,
Virginia;

Noah F. Gibson, IV, M.D., 181 North Main Street, Danville, Virginia;

William W. Henderson, IV, M.D., Danville Pulmonary Clinic, Inc., 110 Exchange Street, Suite G, Danville, Virginia;

Douglas W. Shiflett, M.D., Internal Medicine Associates, Ltd., 101 Holbrook Street, Danville, Virginia; and

Lawrence G. Fehrenbaker, M.D., Danville Urologic Clinic, P.O. Box 1360, Danville, Virginia.

2. 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, for purposes of this order, the following definitions shall apply:

A. "*PGI*" means Physicians Group, Inc., its subsidiaries, divisions, committees, and groups and affiliates controlled by PGI; their directors, officers, representatives, agents, and employees; and their successors and assigns.

B. "*Physician respondents*" means Edwin J. Harvie, Jr., M.D., Eric N. Davidson, M.D., Milton Greenberg, M.D., Noah F. Gibson, IV, M.D., William W. Henderson, IV, M.D., Douglas W. Shiflett, M.D., and Lawrence G. Fehrenbaker, M.D.

C. "*Person*" refers to both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.

D. "*Payor*" means any person that purchases, reimburses for, or otherwise pays for all or part of the health care services for itself or for any other person -- including, but not limited to, health insurance companies; preferred provider organizations; prepaid hospital, medical, or other health service plans; health maintenance organizations; government health benefits programs; employers or other persons providing or administering self-insured health benefits programs; and patients who purchase health care for themselves.

E. "*Reimbursement*" means any and all cash or non-cash compensation or other benefits received for the rendering of physician services.

F. "*Cost containment*" means methods used by payors to lower health care costs, including, but not limited to, procedures under which payors review utilization by participating physicians to determine whether a physician service is covered by insurance and whether such service is appropriate, and procedures under which payors deal with physicians who provide services that are determined not to be appropriate.

G. "*Integrated joint venture*" means a joint arrangement to provide health care services in which all physicians participating in the venture who would otherwise be competitors (1) pool their capital to finance the venture, by themselves or together with others, and (2) share a substantial risk of loss from their participation in the venture.

H. "*Professional business entity*" means professional corporation, professional partnership, and professional limited liability company.

II.

It is further ordered, That PGI and each physician respondent, directly or indirectly, or through any corporate or other device, in connection with the provision of physician services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith shall cease and desist from:

A. Entering into, attempting to enter into, organizing, attempting to organize, implementing, attempting to implement, continuing, attempting to continue, facilitating, attempting to facilitate, ratifying, or attempting to ratify any combination, conspiracy, agreement, or understanding, with or among any physician(s) to:

1. Negotiate, deal, or refuse to deal with a payor, or
2. Determine any terms, conditions, or requirements upon which physicians deal with a payor, including, but not limited to, terms of reimbursement or of cost containment; and

B. Encouraging, advising, pressuring, inducing, or attempting to induce any physician to:

1. Refuse to deal with a payor, or
2. Deal with a payor on terms collectively determined by physicians, including such terms as terms of reimbursement or terms of cost containment.

Provided that, nothing in this order shall prevent physicians who practice together as partners or employees in the same professional business entity from collectively determining the fees to be charged for services rendered by that professional business entity or from collectively determining other terms on which that professional business entity deals with payors.

Further provided that, nothing in this order shall prevent physicians who participate in the same integrated joint venture from collectively determining the fees to be charged for services rendered by that integrated joint venture or from collectively determining other terms on which that integrated joint venture deals with payors.

Further provided that, nothing in this order shall prevent the exercise of rights permitted under the First Amendment to the United States Constitution to petition any federal or state government executive agency or legislative body concerning legislation, rules, or procedures, or to participate in any federal or state administrative or judicial proceeding.

Further provided that, nothing in this order shall prevent physicians from participating at the request of a payor in utilization review activities organized and controlled by the payor insofar as such participation continues only at the sufferance of the payor.

III.

It is further ordered, That PGI shall:

A. Within ten (10) days after the date on which this order becomes final, cease and desist all business and all other activities of any nature whatsoever, except those activities that are required in order to comply with the terms of this order or that are necessary to effect a winding up of PGI's affairs and its dissolution;

B. Within sixty (60) days after the date on which this order becomes final, and prior to the dissolution provided for in paragraph III.C. below, distribute by first-class mail a copy of this order and the accompanying complaint to each past and present member of PGI and

to each payor who, at any time since February 18, 1986, has communicated any desire, willingness, or interest in contracting for physician services with PGI or with any of the physician respondents; and

C. Dissolve itself within one hundred twenty (120) days after the date on which this order becomes final.

IV.

It is further ordered, That each physician respondent shall:

A. Within thirty (30) days after the date this order becomes final, prepare a list of the names, addresses, and telephone numbers of all payors who, at any time since February 18, 1986, have communicated any desire, willingness, or interest in contracting with him for physician services, and deliver a copy of that list to PGI; and

B. Take all actions necessary to effect dissolution of PGI as required by this order.

V.

It is further ordered, That PGI shall:

A. Within ninety (90) days after the date on which this order becomes final, and prior to the dissolution provided for in paragraph III.C. above, file with the Commission a verified written report demonstrating how it has complied and is complying with this order; and

B. Notify the Commission at least thirty (30) days prior to any proposed change in PGI, such as change of address, assignment, sale resulting in the emergence of a successor, or any other change in PGI that may affect compliance obligations arising out of this order.

VI.

It is further ordered, That each physician respondent shall:

A. Within sixty (60) days after the date this order becomes final, every sixty (60) days thereafter in which PGI is not dissolved, and within the thirty (30) days following dissolution of PGI, file with the

Commission a verified written report setting forth in detail the manner and form in which he intends to comply, is complying, and has complied with this order, including, but not limited to, a full description of his efforts to comply with paragraph IV.B. above;

B. Beginning on January 15, 1996, and continuing annually for three (3) years, on each succeeding January 15, through and including January 15, 1999, and at such other times as the Commission or its staff may by written notice require, file with the Commission a verified written report setting forth in detail the manner and form in which he has complied with the order; and

C. For ten (10) years, notify the Commission at least thirty (30) days prior to any proposed change in his address or in his medical practice, such as dissolution, assignment, sale resulting in the emergence of a successor, or any other change in his medical practice that may affect compliance obligations arising out of this order.

VII.

It is further ordered, That, for the purpose of determining or securing compliance with this order and subject to any recognizable privilege, PGI and each physician respondent 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 the possession or under the control of PGI or a physician respondent relating to any matters contained in this order;

B. Upon five business days' notice to PGI and without restraint or interference from it, to interview the officers, directors, or employees of PGI; and

C. Upon five business days' notice to a physician respondent and without restraint or interference from him, to interview the physician respondent or the employees of the physician respondent.

VIII.

It is further ordered, That this order shall terminate twenty (20) years from the date of issuance.

IN THE MATTER OF

EQUIFAX CREDIT INFORMATION SERVICES, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FAIR CREDIT REPORTING ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3611. Complaint, Aug. 14, 1995--Decision, Aug. 14, 1995

This consent order requires, among other things, a Georgia-based corporation to follow reasonable procedures to assure maximum possible accuracy when preparing consumer reports as required by the Fair Credit Reporting Act and to also maintain reasonable procedures to limit the furnishing of consumer reports to the purposes listed under Section 604 of the Fair Credit Reporting Act.

Appearances

For the Commission: *Christopher W. Keller, Donald D'Entremont and David Medine.*

For the respondent: *Kent Mast, Kilpatrick & Cody, Atlanta, GA.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, and the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Equifax Credit Information Services, Inc. ("Equifax"), a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

DEFINITIONS

For the purpose of this complaint, the following definitions apply:

The terms "*person*," "*consumer*," "*consumer report*," "*consumer reporting agency*," and "*file*" are defined as set forth in Sections