

Complaint

IN THE MATTER OF

SOUTH GEORGIA HEALTH PARTNERS, L.L.C., ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-4100; File No. 0110222**Complaint, October 31, 2003--Decision, October 31, 2003*

This consent order, among other things, prohibits Respondent South Georgia Health Partners, L.L.C. ("SGHP") -- a for-profit organization whose members include approximately 500 physicians and 15 hospitals -- and eight other respondents, including five other physician-hospital organizations; and three independent practice associations, from entering into or facilitating any agreement between or among any physicians: (1) to negotiate with payors on any physician's behalf; (2) to deal, refuse to deal, or threaten to refuse to deal with payors; (3) on what terms to deal with any payor; or (4) not to deal individually with any payor, or not to deal with any payor through an arrangement other than respondents. The order also prohibits the respondents from facilitating exchanges of information between physicians concerning whether, or on what terms, to contract with a payor. In addition, the order prohibits the respondents from attempting to engage in, or from inducing anyone to engage in, any action prohibited by the order. The order also requires a respondent that has formed certain types of arrangements to notify the Commission at least 60 days prior to negotiating or entering into agreements with payors or discussing price or related terms among the participants of the arrangement, and requires the respondents to notify certain payors that any contract with SGHP may be terminated at the payor's written request.

Participants

For the Commission: *Steven J. Osnowitz, Jerod T. Klein, Pamela L. Timus, Emily R. Pitlick, David R. Pender, Jeffrey W. Brennan, Anne R. Schenof, Roberta S. Baruch, Fred Martin Louis Silvia and Mary T. Coleman.*

For the Respondents: *Jeffrey Spigel, King & Spalding and David Robbins, Duane Morris.*

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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, having reason to believe that South Georgia Health Partners, L.L.C. (“SGHP”); Coastal Plains Health Alliance, L.L.C. (“Coastal Plains Health Alliance”); Colquitt County PHO, L.L.C. (“Colquitt County PHO”); Colquitt County Physicians Association, L.L.C. (“Colquitt County Physicians”); Georgia/Florida Preferred, L.L.C., dba Health Alliance of the South (“Health Alliance of the South”); Qualicare Physicians Association, L.L.C. (“Qualicare Physicians Association”); Satilla HealthNet, Inc. (“Satilla HealthNet”); South Georgia PHO, L.L.C. (“South Georgia PHO”); and South Georgia Physician Network, L.L.C. (“South Georgia Physician Network”); hereinafter referred to as “Respondents,” have violated and are violating Section 5 of the Federal Trade Commission Act, as amended, 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. Fifteen hospitals and approximately 500 physicians in a large region of south Georgia have agreed to restrain competition by collectively setting the price and other terms of contracts that they enter into with employers, health insurers, and others that seek to provide health care coverage in that area (“payors”). Respondents have jointly refused to deal individually with payors not willing to meet Respondents' collective terms. These price-fixing agreements and concerted refusals to deal among competing hospitals and competing physicians have raised the cost of health care in south Georgia. Respondents have not shared substantial financial risk in their provision of physician or hospital services and have not integrated their practices in any other way, so as to justify their collective pricing agreements.

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SOUTH GEORGIA HEALTH PARTNERS, L.L.C.

2. SGHP is a for-profit limited liability company that is organized, existing, and doing business under, and by virtue of, the laws of the State of Georgia. Its principal address is 160 East Second Street, Tifton, Georgia 31794. SGHP represents hospitals and physicians in the negotiation of contracts with payors, pursuant to which the payors compensate the hospitals and physicians for the services that they provide to enrollees in the payors' health care plans.

3. SGHP is the type of organization that is sometimes referred to as a "physician-hospital organization" or "PHO." Five other PHOs (the "Owner PHOs") jointly own and are part of SGHP. As such, SGHP is sometimes also referred to as a "Super PHO." Each Owner PHO has multiple physician members and at least one hospital; in total, the Owner PHOs include 10 hospitals. Physician members in three of the Owner PHOs are also organized into independent practice associations (the "IPA Respondents").

4. Five hospitals in south Georgia, although not members of any Owner PHO, are members of SGHP and enter into payor contracts that SGHP negotiates on their collective behalf. These hospitals are: Bacon County Hospital in Alma; Berrien County Hospital in Nashville; Donalsonville Hospital in Donalsonville; Dorminy Medical Center in Fitzgerald; and Memorial Hospital in Adel.

5. SGHP has as members approximately 500 physicians and 15 hospitals that, collectively, have more than 2,200 staffed beds. The hospital and physician members of SGHP as a group provide services in a very large section of south Georgia, extending eastward in Georgia from the Alabama border through Ware County and including the cities of Valdosta, Tifton, Thomasville, Moultrie, and Waycross ("South Georgia"). The area has a population of approximately 550,000. Approximately 90% of all physicians practicing in South Georgia are SGHP members, and

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SGHP's 15 hospital members are the sole hospitals (with the exception of one small hospital in Valdosta) in the mostly contiguous counties in which they are located.

THE OWNER PHO RESPONDENTS

6. Coastal Plains Health Alliance is a for-profit limited liability company that is organized, existing, and doing business under, and by virtue of, the laws of the State of Georgia. Its principal address is 160 East Second Street, Tifton, Georgia 31794. Coastal Plains Health Alliance is a PHO that jointly owns SGHP with the other Owner PHOs. Tift Regional Medical Center, and approximately 90% of all physicians in Tift County, are its members.

7. Colquitt County PHO is a for-profit limited liability company that is organized, existing, and doing business under, and by virtue of, the laws of the State of Georgia. Its principal address is 2421 South Main Street, Moultrie, Georgia 31768. It is a PHO that jointly owns SGHP with the other Owner PHOs. Colquitt Regional Medical Center, and approximately 90% of all physicians in Colquitt County, are its members.

8. Health Alliance of the South is a for-profit limited liability company that is organized, existing, and doing business under, and by virtue of, the laws of the State of Georgia. Its principal address is John D. Archbold Memorial Hospital, 915 Gordon Avenue, Thomasville, Georgia 31792. Health Alliance of the South is a PHO that jointly owns SGHP with the other Owner PHOs. Its hospital members are John D. Archbold Memorial Hospital in Thomasville, and four hospitals leased and managed by John D. Archbold Memorial Hospital: Brooks County Hospital in Quitman; Early Memorial Hospital in Blakely; Grady General Hospital in Cairo; and Mitchell County Hospital in Camilla. Approximately 90% of all physicians in Thomas County, and a high percentage of the physicians in the counties of Brooks, Early, Grady, and Mitchell, are also members of Health Alliance of the South.

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9. Satilla HealthNet is a non-profit corporation that is organized, existing, and doing business under, and by virtue of, the laws of the State of Georgia. Its principal address is 1800 Alice Street, Waycross, Georgia 31501. Satilla HealthNet is a PHO that jointly owns SGHP with the other Owner PHOs. Satilla Regional Medical Center, and approximately 90% of all physicians in Ware County, are its members.

10. South Georgia PHO is a for-profit limited liability company that is organized, existing, and doing business under, and by virtue of, the laws of the State of Georgia. Its principal address is 2501 North Patterson Street, Valdosta, Georgia 31602. It is a PHO that jointly owns SGHP with the other Owner PHOs. South Georgia Medical Center in Valdosta and Louis Smith Memorial Hospital in Lakeland, a hospital leased and managed by South Georgia Medical Center, along with approximately 90% of all physicians in Lowndes and Lanier counties, are members of South Georgia PHO.

THE IPA RESPONDENTS

11. Colquitt County Physicians is a for-profit limited liability company that is organized, existing, and doing business under, and by virtue of, the laws of the State of Georgia. Its principal address is 2421 South Main Street, Moultrie, Georgia 31768. Colquitt County Physicians is an IPA that includes approximately 90% of all physicians in Colquitt County, and is itself affiliated with Colquitt County PHO.

12. Qualicare Physicians Association is a for-profit limited liability company that is organized, existing, and doing business under, and by virtue of, the laws of the State of Georgia. Its principal address is 808 Gordon Avenue, Thomasville, Georgia 31792. Qualicare Physicians Association is an IPA that includes approximately 90% of all physicians in Thomas County, and is itself affiliated with Health Alliance of the South.

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13. South Georgia Physician Network is a for-profit limited liability company that is organized, existing, and doing business under, and by virtue of, the laws of the State of Georgia. Its principal address is 102 W. Moore Street, Valdosta, Georgia 31602. South Georgia Physician Network is an IPA that includes approximately 90% of all physicians in Lowndes County, and is itself affiliated with South Georgia PHO.

JURISDICTION

14. Respondents' general business practices and conduct, including the acts, practices, and conduct alleged herein, are in or affecting "commerce" as defined in the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

15. Respondent Satilla HealthNet is organized in substantial part, and is engaged in substantial activities, for its members' pecuniary benefit, and therefore is a "corporation" within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

**OVERVIEW OF PHYSICIAN AND HOSPITAL
CONTRACTING WITH PAYORS**

16. Physicians, hospitals, PHOs, and IPAs often enter into contracts with payors that establish the terms and conditions, including prices and other competitively significant terms, upon which such health care providers will provide professional services to subscribers of the payors' health care plans. Physicians, hospitals, PHOs, and IPAs contracting with payors often agree to reductions in their compensation to obtain access to additional patients made available by the payors' relationship with their health plan enrollees. These contracts may reduce payors' costs, enable them to lower the price of health insurance, and reduce out-of-pocket medical care expenditures by subscribers to the payors' health insurance plans.

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17. Physicians organize their practices under several models, including, but not limited to, sole proprietorships, partnerships, and professional corporations (collectively “physician entities”). Absent agreements among them on the terms on which they will provide services to payors’ health plan enrollees, competing physician entities decide unilaterally whether to enter into contracts with payors to provide services to the payor’s enrollees, and at what prices and upon what other terms and conditions they will accept such contracts.

18. Likewise, absent agreements among them on the terms on which they will provide services to payors’ health plan enrollees, competing hospitals decide unilaterally whether to enter into contracts with payors to provide hospital services to the payor’s enrollees, and at what prices and upon what other terms and conditions they will accept such contracts.

19. Physicians sometimes participate in IPAs that enter into contracts with payors for the provision of physician services. An IPA may involve integration among its participating physicians in ways that create efficiencies sufficient to justify the IPA’s negotiation and execution of payor contracts on its physicians’ collective behalf. For example, in some IPAs, physicians share with each other the risk that the total costs of member physician services to a payor’s health plan enrollees may exceed targeted levels. Such physicians usually agree to follow guidelines relating to quality assurance, utilization review, administrative efficiency, and other components of cost, to improve efficiency and minimize this risk of financial loss. Agreement among such financial risk-sharing IPA members on the price to charge for the provision of their services may be reasonably necessary to achieve these efficiencies.

20. Absent agreements with non-member physicians on the terms on which they will provide services to payors’ health plan enrollees, integrated IPAs decide unilaterally whether to enter into contracts with payors to provide physician services to the payor’s

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enrollees, and at what prices and upon what other terms and conditions they will accept such contracts.

21. Physicians and hospitals sometimes participate in PHOs that enter into contracts with payors for the provision of physician and hospital services. A PHO may involve integration among its participating physicians and hospitals (if more than one hospital participates) in ways that create efficiencies sufficient to justify the PHO's negotiation and execution of payor contracts on its physicians' and hospitals' collective behalf. For example, in some PHOs, physician members share with each other the risk that the total costs of physician services to a payor's health plan enrollees may exceed targeted levels. Such physicians usually agree to follow guidelines relating to quality assurance, utilization review, administrative efficiency, and other components of cost, to improve efficiency and minimize this risk of financial loss. Agreement among such financial risk-sharing PHO members on the price to charge for the provision of their services may be reasonably necessary to achieve these efficiencies.

22. Medicare's Resource Based Relative Value Scale ("RBRVS") is a system used by the United States Centers for Medicare and Medicaid Services to determine the amount to pay physicians for the services they render to Medicare patients. The RBRVS approach provides a method to determine fees for specific services, and to compare fees. In general, payors in South Georgia contract with individual physicians or groups at a price level specified as some percentage of the RBRVS fee for a particular year (*e.g.*, "120% of 2003 RBRVS"), or, for their own analysis, they sometimes calculate the percentage of RBRVS that a physician's price list would equal.

23. Contracts between payors and hospitals contain various methods for determining prices for inpatient services. One such method is a "per diem" payment, which is a set charge per day for a particular inpatient service. Another method is "per case rate." This is a set charge for a particular type of case, which often is defined by the applicable "diagnosis related group" (or "DRG").

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Per diem and per case rate methods can make pricing more certain and provide incentives for hospitals to use resources more efficiently. A third method is a set percentage discount off the hospital's list prices. This method often does not prevent the hospital, during the contract period, from unilaterally raising the list prices to which the discount is applied.

**RESPONDENTS ARE ORGANIZATIONS OF
COMPETITORS**

24. At all times relevant to this Complaint, the physician members of SGHP, the Owner PHOs, and the IPA Respondents were engaged in the business of providing physician services for a fee. Except to the extent that competition has been restrained as alleged herein, physician members of each Respondent have been, and are now, in competition with each other, and with physician members of other Respondents, for the provision of physician services.

25. At all times relevant to this Complaint, the hospital members of SGHP and the Owner PHOs were engaged in the business of providing hospital services for a fee. Except to the extent that competition has been restrained as alleged herein, hospital members of such Respondents have been, and are now, in competition with each other for the provision of hospital services.

26. To be competitive in South Georgia, a payor's health insurance plan must include in its provider networks at least one of the SGHP member hospitals and a large number of the physicians who practice in that region. In any given area of South Georgia, approximately 90% of the practicing physicians are members of SGHP.

SGHP'S FORMATION AND OPERATION

27. In 1995, four Owner PHOs – Coastal Plains Health Alliance, Colquitt County PHO, Health Alliance of the South, and South Georgia PHO – formed SGHP, each taking a 25%

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ownership share. They agreed that SGHP would become a vehicle through which their member hospitals and member physicians would negotiate collectively for payor contracts. A Colquitt County PHO executive explained that SGHP “would in essence keep the [member] hospitals from competing . . . and ending up with a price war that would not benefit any of the major hospitals,” and would look “to reimburse the physicians a professional rate as high as the market will bear.”

28. In 2001, Satilla HealthNet became SGHP’s fifth Owner PHO, and the five Owner PHOs each took 20% ownership shares. Satilla HealthNet’s chief executive explained its joining SGHP as “an opportunity to improve our presence or ‘clout’ while negotiating contracts” with payors.

29. SGHP has a 20-member board of directors. Each Owner PHO appoints four board members – two physicians and two hospital representatives. An IPA Respondent selects the physician board members for the slots belonging to the Owner PHO with which it is affiliated. To join SGHP, a physician must belong to an Owner PHO and pay annual dues to SGHP. Virtually every physician member of an Owner PHO and an IPA Respondent is also a dues-paying member of SGHP.

30. According to SGHP’s records: “It is the policy of South Georgia Health Partners that all statewide and national managed care contracting be conducted through the Contract Review Committee who will engage in the evaluation and negotiation of managed care contracts in accordance with the criteria set forth by the South Georgia Health Partners Board of Directors. South Georgia Health Partners Board of Directors will have final approval of all managed care contracts recommended by the Contract Review Committee.” The chief executive and chief financial officers of the flagship hospital members of the Owner PHOs, along with physician representatives, constitute the Contract Review Committee.

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31. After forming SGHP, the Owner PHOs, member hospitals, and member physicians began to cancel contracts with payors and to inform them that SGHP was the sole entity through which they would enter into future payor contracts. Thereafter, SGHP began to negotiate fee-for-service contracts with payors on behalf of its physician and hospital members. Members bill payors directly for services rendered, and payors remit payment directly to the physicians and hospitals. SGHP has not entered into any payor contracts that did not include both hospital and physician members. As an SGHP executive stated in a July 1997 board of directors meeting concerning a particular payor contract, "we want to include the physician component in this contract, not just negotiate on behalf of the hospitals but negotiate on behalf of South Georgia Health Partners as one entity."

SGHP Physician Contracting Practices

32. SGHP has a single price list for its member physicians. Payors must agree to pay the prices on SGHP's price list or forfeit the ability to enter into an SGHP contract for physician services. Payors have tried, but failed, to negotiate with SGHP for price reductions from this list. On a weighted average, SGHP's physician prices are approximately 187% of RBRVS, which is a substantially higher rate than payors pay elsewhere in Georgia.

33. SGHP's rules do not prohibit member physicians from contracting with payors separately from SGHP, and permit member physicians to choose whether to "opt in" or "opt out" of payor contracts that SGHP negotiates. In practice, however, SGHP physicians regularly insist on dealing with payors only pursuant to an SGHP contract, to maximize the negotiating leverage that results from acting in concert with their competitors. For example, at a 1997 board meeting, SGHP directors agreed to send a letter to physician members, warning them that they should not participate in a health plan that offered insufficient payment terms.

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34. The practice of, and rationale for, physician collective action through SGHP is reflected in messages that SGHP leaders repeatedly conveyed to the membership. For example, at the same July 1997 board meeting, an SGHP board member asserted that “if you announce to 350 physicians in South Georgia ‘don’t sign [a certain contract]’ and hopefully get good participation in not signing it, [the payor] will go away with this fee schedule . . . and have to come back with something more competitive.” Similarly, at a meeting in 2000, a leader of IPA Respondent South Georgia Physician Network told other physician members: “**Stay together, if nothing else stay together!** [Emphasis in original.] Strong physician groups are powerful organizations. . . . There will be unprecedented efforts to create fissures in the organization and bring about [two] competitive IPAs that can be played against one another.”

SGHP Hospital Contracting Practices

35. SGHP negotiates payor contracts, including price terms, on its member hospitals’ collective behalf. Member hospitals determine their own respective price lists and submit them to SGHP negotiators. SGHP, in turn, through the authority vested in it by the board of directors, fixes the maximum allowable percentage discount from member hospital price lists. SGHP has fixed the discount at a level not to exceed 10%, and has refused repeated payor requests for deeper discounts for particular, and for all, member hospitals. SGHP has also successfully resisted payor attempts to negotiate changes in hospital list prices, or to obtain hospital pricing on a per diem or per case basis.

36. SGHP member hospitals have agreed, and memorialized into the SGHP operating agreement, that they will not deal independently of SGHP for most payor contracts, unless 75% of the SGHP board votes to authorize an exception to this practice. The board enforces this requirement. For example, in 2001, the City of Valdosta, Georgia, which insures its employees, desired to contract separately with South Georgia Medical Center, an SGHP member and Owner PHO member. SGHP’s contract review

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committee “did not feel that allowing [the hospital] to contract independently with the City of Valdosta was wise” and recommended that the board forbid the hospital from doing so. On June 25, 2001, the board voted unanimously to forbid the contract.

37. The SGHP hospitals have agreed that even if an SGHP member hospital is authorized by the SGHP board to contract independently with a payor, that hospital cannot provide a discount from its respective list prices greater than 10%, unless that hospital agrees to provide the deeper discount to every payor with which SGHP has a contract. Members have referred to this as SGHP’s “most-favored-nations” clause. This agreement creates a substantial disincentive for any member hospital to deviate from the 10% discount level, because, by lowering prices to one payor, the hospital would have to do so for all payors with which it was under contract. For example, in negotiations with one payor, at least one SGHP hospital member would have accepted a proposed 15% discount from list prices, but ultimately refrained from doing so because – under the most-favored-nations requirement in its SGHP agreement – the hospital would have had to extend this price savings to all other payors with which it had a contract.

38. The most-favored-nations clause served SGHP hospital members’ collusive purposes, therefore, by creating a substantial disincentive for any member hospital to offer a discount greater than the organization’s fixed 10% discount. In practice, hospitals have not deviated from this fixed discount maximum – resulting in substantially higher prices to payors. To enforce this requirement as to the five member hospitals not belonging to an Owner PHO, moreover, SGHP can demand that the hospital certify that it is not providing more favorable pricing terms to any payor, and may audit the hospital’s prices to assess the accuracy of the certification.

39. The SGHP hospitals have also agreed that all of them must perform under any payor contract that SGHP enters, unless 75%

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of the SGHP board votes to authorize an exception. SGHP has also required payors to agree to an exclusivity clause in their contracts with SGHP, under which the payor is not allowed to cover services at any non-SGHP hospital in South Georgia. This has blocked some payors' ability to access the services at Smith Hospital in Valdosta, which is not a member of SGHP.

40. In addition to maintaining artificially high prices by concertedly fixing the rate of discounts from list prices, SGHP's restrictive contracting practices for hospitals prevent payors from selecting particular hospitals with which to negotiate for inclusion in the payors' health plan networks. Absent SGHP's policies, in negotiating with selected hospitals, payors would offer access to their subscriber base in exchange for significant reduction in hospital prices.

**RESPONDENTS' ANTICOMPETITIVE ACTS AND
PRACTICES IN DEALING WITH PARTICULAR PAYORS**

UnitedHealth Group

41. UnitedHealth Group is a payor doing business in South Georgia. In 2001, United attempted to negotiate individual contracts with physician and hospital members of SGHP. The SGHP members refused to negotiate unilaterally, however, and consistently referred United to SGHP as their bargaining entity. Having no reasonable alternative but to follow the physicians' and hospitals' instructions, United attempted to bargain with SGHP – offering to pay for physician services at 140% of 2001 RBRVS and for hospital services at list prices minus a 25% discount. SGHP rejected United's offer. It demanded that United pay for physician services according to SGHP's price list (approximately 187% of RBRVS, on a weighted average basis) and for hospital services according to each member hospital's price list, minus a 10% discount. To be in a position to market a health care plan in South Georgia, United had no choice but to meet SGHP's price terms, and did so.

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Coventry Health Care

42. Coventry Health Care assembles networks of physicians and hospitals and, for a fee, offers those networks to payors for inclusion in their health care plans. In 1999, one of SGHP's Owner PHOs, South Georgia PHO, terminated its relationship with Coventry, and told Coventry that its physician and hospital services would be available only as part of an agreement with SGHP. In contract negotiations, SGHP demanded that Coventry contract exclusively with SGHP member physicians and pay them according to SGHP's price list, which on average meant a 40% price increase to Coventry. SGHP also insisted that Coventry pay higher prices to South Georgia Medical Center by accepting a discount off list prices that was smaller, by about one-third, than Coventry's then-existing discount.

43. Faced with SGHP's demands for higher hospital and physician prices, Coventry attempted to deal individually with SGHP member hospitals and physicians to obtain lower prices. Coventry consistently was unsuccessful in this effort. SGHP members told Coventry that it must deal with SGHP to obtain its members' services. Having no reasonable alternatives in South Georgia, Coventry met SGHP's terms and signed a contract. The prices that Coventry is paying for physician services under its SGHP contract are the highest that Coventry pays in Georgia.

South Georgia Purchasing Alliance

44. South Georgia Purchasing Alliance ("Alliance") is a coalition of 20 of the larger employers in South Georgia, most of which are located in or near Valdosta, Georgia. In 2002, the Alliance attempted to purchase health insurance for its members' employees, and reached a tentative agreement on a contract with South Georgia Medical Center, which is a member of SGHP. SGHP's board of directors voted to reject the contract, however, and to prohibit South Georgia Medical Center from dealing individually with the Alliance.

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45. During 2001 and 2002, the Alliance also attempted to contract for physician services through SGHP, South Georgia PHO, and South Georgia Physician Network. The Alliance offered to pay the physicians, on a weighted average basis, approximately 150% of the current year's RBRVS. All of the physician groups rejected the Alliance's offer, however, and insisted that the Alliance meet SGHP's physician fee schedule, which, on a weighted average basis, equaled approximately 187% of RBRVS. Over the same period, the Alliance attempted to contract on an individual basis with more than 160 Valdosta-based physicians. Only six of them agreed to contract with the Alliance. As a result of SGHP's restrictive policies, the Alliance is blocked from assembling a health plan network for the employees of its member companies.

Cigna Health Care

46. Cigna Health Care is a payor doing business in South Georgia. In 2002, SGHP member hospitals terminated their participation in the lowest-priced health plan that Cigna offered to employers in South Georgia. Thereafter, Cigna contacted each hospital on an individual basis and attempted to negotiate new contract terms with each of them. The hospitals refused to negotiate unilaterally and told Cigna that it would have to bargain with SGHP for their services under this plan. Having no reasonable alternative but to follow the hospitals' instructions, Cigna attempted to bargain with SGHP, which told Cigna that it negotiated on the collective behalf of all SGHP member hospitals and physicians.

47. SGHP told Cigna that, to obtain a contract for services from SGHP's hospital members, Cigna must pay what would have amounted to approximately an 80% increase in the prices that Cigna had been paying to SGHP hospitals under this plan. SGHP also insisted that Cigna pay its physicians according to SGHP's physician services price list, which contained, on average, the highest prices in Georgia. SGHP's price demands were too costly for Cigna to continue marketing its low-cost health plan to

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employers; consequently, it stopped selling the plan in South Georgia. As a result, employers were compelled to purchase a higher-priced, alternative health plan, or to discontinue their provision of health insurance to their employees.

Other Payors

48. Respondents have orchestrated collective negotiations with other payors that do business, or attempted to do business, in South Georgia, including Blue Cross and Blue Shield of Georgia, NovaNet, One Health Plan of Georgia, Beech Street Corporation, and Private Health Care Systems. Respondents, through and with SGHP, fixed price terms for physician and hospital services and refused to enter contracts with payors that would not meet those terms. Due to SGHP's dominant market position in South Georgia, its tactics have been highly successful. SGHP member physicians and hospitals have been able to extract far higher prices from these payors than they could have obtained by negotiating unilaterally.

**RESPONDENTS HAVE ENGAGED IN RESTRAINTS
OF TRADE**

49. Respondents, acting as a combination of competing physicians and hospitals, have restrained competition by, among other things:

- A. facilitating, negotiating, entering into, and implementing agreements on price and other competitively significant terms;
- B. refusing to deal with payors except on collectively agreed-upon terms; and
- C. negotiating prices and other competitively significant terms in contracts with payors.

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**NO SIGNIFICANT EFFICIENCIES JUSTIFY
RESPONDENTS' CONDUCT**

50. Respondents' joint negotiation of prices and other competitively significant terms has not been, and is not, reasonably related to any efficiency-enhancing integration sufficient to justify the acts and practices described above.

ANTICOMPETITIVE EFFECTS

51. Respondents' actions described in paragraphs 1 and 27 through 49 of this Complaint have had, or have tended to have, the effect of restraining trade unreasonably and hindering competition in the provision of physician and hospital services in South Georgia in the following ways, among others:

- A. price and other forms of competition among Respondents' physician members were unreasonably restrained;
- B. price and other forms of competition among Respondents' hospital members were unreasonably restrained;
- C. prices for physician services were increased;
- D. prices for hospital services were increased;
- E. health plans, employers, and individual consumers were deprived of the benefits of competition among physicians;
- F. health plans, employers, and individual consumers were deprived of the benefits of competition among hospitals.

52. The combination, conspiracy, acts and practices described above constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 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.

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WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this thirty-first day of October, 2003, issues its Complaint.

By the Commission, Commissioner Harbour not participating.

Decision and Order

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of certain acts and practices of South Georgia Health Partners, L.L.C. (“SGHP”); Coastal Plains Health Alliance, L.L.C. (“Coastal Plains Health Alliance”); Colquitt County PHO, L.L.C. (“Colquitt County PHO”); Colquitt County Physicians Association, L.L.C. (“Colquitt County Physicians”); Georgia/Florida Preferred, L.L.C., dba Health Alliance of the South (“Health Alliance of the South”); Qualicare Physicians Association, L.L.C. (“Qualicare Physicians Association”); Satilla HealthNet, Inc. (“Satilla HealthNet”); South Georgia PHO, L.L.C. (“South Georgia PHO”); and South Georgia Physician Network, L.L.C. (“South Georgia Physician Network”), hereinafter referred to as “Respondents,” and Respondents having been furnished thereafter with a copy of the draft of Complaint that counsel for the Commission proposed to present to the Commission for its consideration and which, if issued, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order to Cease and Desist (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent 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 Respondents have violated said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the

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public record for a period of thirty (30) days for the receipt and consideration of public comments, and having carefully considered the comments received from interested persons, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues the following Order:

1. Respondent SGHP is a for-profit limited liability company, organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 160 East Second Street, Tifton, Georgia 31794.
2. Respondent Coastal Plains Health Alliance is a for-profit limited liability company, organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 160 East Second Street, Tifton, Georgia 31794.
3. Respondent Colquitt County PHO is a for-profit limited liability company, organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 2421 South Main Street, Moultrie, Georgia 31768.
4. Respondent Colquitt County Physicians is a for-profit limited liability company, organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 2421 South Main Street, Moultrie, Georgia 31768.
5. Respondent Health Alliance of the South is a for-profit limited liability company, organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business

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located at John D. Archbold Memorial Hospital, 915
Gordon Avenue, Thomasville, Georgia 31792.

6. Respondent Qualicare Physicians Association is a for-profit limited liability company, organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 808 Gordon Avenue, Thomasville, Georgia 31792.
7. Respondent Satilla HealthNet is a non-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 1800 Alice Street, Waycross, Georgia 31501.
8. Respondent South Georgia PHO is a for-profit limited liability company, organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 2501 North Patterson Street, Valdosta, Georgia 31602.
9. Respondent South Georgia Physician Network is a for-profit limited liability company, organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 102 W. Moore Street, Valdosta, Georgia 31602.
10. 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, as used in this Order, the following definitions shall apply:

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- A. “Respondent SGHP” means South Georgia Health Partners, L.L.C., its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- B. “Respondent Coastal Plains Health Alliance” means Coastal Plains Health Alliance, L.L.C., its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- C. “Respondent Colquitt County PHO” means Colquitt County PHO, L.L.C., its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- D. “Respondent Colquitt County Physicians” means Colquitt County Physicians Association, L.L.C., its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- E. “Respondent Health Alliance of the South” means Georgia/Florida Preferred, L.L.C., dba Health Alliance of the South, its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.

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- F. “Respondent Qualicare Physicians Association” means Qualicare Physicians Association, L.L.C., its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- G. “Respondent Satilla HealthNet” means Satilla HealthNet, Inc., its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- H. “Respondent South Georgia PHO” means South Georgia PHO, L.L.C., its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- I. “Respondent South Georgia Physician Network” means South Georgia Physician Network, L.L.C., its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- J. “Hospital” means a health care facility that provides inpatient and outpatient care and services for the diagnosis and treatment of medical conditions.
- K. “Hospital system” means an organization comprising two or more hospitals where the same person(s) controls each hospital in the organization. For purposes of this

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definition, the definition of the term “control” under 16 C.F.R. § 801.1(b) shall apply. “Hospital system” includes a hospital that is managed under contract, or is leased, by a hospital member of a Respondent Owner PHO.

- L. “Respondent IPAs” means Respondents Colquitt County Physicians, Qualicare Physicians Association, and South Georgia Physician Network. “Respondent Owner PHOs” means Respondents Coastal Plains Health Alliance, Colquitt County PHO, Health Alliance of the South, Satilla HealthNet, and South Georgia PHO.
- M. “Participate” in an entity means (1) to be a partner, shareholder, owner, member, or employee of such entity, or (2) to provide services, agree to provide services, or offer to provide services to a payor through such entity. This definition applies to all tenses and forms of the word “participate,” including, but not limited to, “participating,” “participated,” and “participation.”
- N. “Payor” means any person that pays, or arranges for payment, for all or any part of any physician or hospital services for itself or for any other person. Payor includes any person that develops, leases, or sells access to networks of physicians or hospitals.
- O. “Person” means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.
- P. “Physician” means a doctor of allopathic medicine (“M.D.”) or a doctor of osteopathic medicine (“D.O.”).
- Q. “Preexisting contract” means a contract that was in effect on the date of the receipt by a payor that is a party to such contract of notice sent by a Respondent, pursuant to Paragraph V.A.3. or Paragraph V.A.4. of this Order, of such payor’s right to terminate such contract.

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- R. “Principal address” means either (1) primary business address, if there is a business address, or (2) primary residential address, if there is no business address.
- S. “Qualified clinically-integrated joint arrangement” means an arrangement to provide physician services, hospital services, or both physician and hospital services in which:
 - 1. All physicians and hospitals that participate in the arrangement participate in active and ongoing programs of the arrangement to evaluate and modify the practice patterns of, and create a high degree of interdependence and cooperation among, the physicians and hospitals that participate in the arrangement, in order to control costs and ensure the quality of services provided through the arrangement; and
 - 2. Any agreement concerning price or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies through the arrangement.
- U. “Qualified risk-sharing joint arrangement” means an arrangement to provide physician services, hospital services, or both physician and hospital services in which:
 - 1. All physicians and hospitals that participate in the arrangement share substantial financial risk through their participation in the arrangement and thereby create incentives for the physicians and hospitals that participate to jointly control costs and improve quality by managing the provision of physician and hospital services, such as risk-sharing involving:
 - a. the provision of physician or hospital services to payors at a capitated rate;

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- b. the provision of physician or hospital services for a predetermined percentage of premium or revenue from payors;
 - c. the use of significant financial incentives (*e.g.*, substantial withholds) for physicians or hospitals that participate to achieve, as a group, specified cost-containment goals; or
 - d. the provision of a complex or extended course of treatment that requires the substantial coordination of care by hospitals or physicians in different specialties offering a complementary mix of services, for a fixed, predetermined price, where the costs of that course of treatment for any individual patient can vary greatly due to the individual patient's condition, the choice, complexity, or length of treatment, or other factors; and
2. Any agreement concerning price or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies through the arrangement.

II.

IT IS FURTHER ORDERED that each 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 Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, cease and desist from:

- A. Entering into, adhering to, participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding between or among any physicians:

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1. To negotiate on behalf of any physician with any payor;
 2. To deal, refuse to deal, or threaten to refuse to deal with any payor;
 3. Regarding any term, condition, or requirement upon which any physician deals, or is willing to deal, with any payor, including, but not limited to, price terms; or
 4. Not to deal individually with any payor, or not to deal with any payor through any arrangement other than Respondent(s);
- B. Exchanging or facilitating in any manner the exchange or transfer of information among physicians concerning any physician's willingness to deal with a payor, or the terms or conditions, including price terms, on which the physician is willing to deal with a payor;
- C. Attempting to engage in any action prohibited by Paragraph II.A. or II.B. above; and
- D. Encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any person to engage in any action that would be prohibited by Paragraphs II.A. through II.C. above.

PROVIDED, HOWEVER, that, nothing in this Paragraph II. shall prohibit any agreement involving, or conduct by any Respondent Owner PHO or any Respondent IPA, subject to the provisions of Paragraph IV. below, that is reasonably necessary to form, participate in, or take any action in furtherance of a qualified risk-sharing joint arrangement or a qualified clinically-integrated joint arrangement, so long as the arrangement does not include more than one Respondent Owner PHO or more than one Respondent IPA, and so long as the arrangement does not restrict the ability,

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or facilitate the refusal, of physicians who participate in it to deal with payors on an individual basis or through any other arrangement.

III.

IT IS FURTHER ORDERED that each Respondent, directly or indirectly, or through any corporate or other device, in connection with the provision of hospital services in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, cease and desist from:

- A. Entering into, adhering to, participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding between or among any hospitals:
 - 1. To negotiate on behalf of any hospital with any payor;
 - 2. To deal, refuse to deal, or threaten to refuse to deal with any payor;
 - 3. Regarding any term, condition, or requirement upon which any hospital deals, or is willing to deal, with any payor, including, but not limited to, price terms; or
 - 4. Not to deal individually with any payor, or not to deal with any payor through any arrangement other than Respondent(s);
- B. Exchanging or facilitating in any manner the exchange or transfer of information between or among hospitals concerning any hospital’s willingness to deal with a payor, or the terms or conditions, including price terms, on which the hospital is willing to deal with a payor;
- C. Attempting to engage in any action prohibited by Paragraph III.A. or III.B. above; and

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- D. Encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any person to engage in any action that would be prohibited by Paragraphs III.A. through III.C. above.

PROVIDED, HOWEVER, that, nothing in this Paragraph III. shall prohibit any agreement involving, or conduct by any Respondent Owner PHO or any Respondent IPA, subject to the provisions of Paragraph IV. below, that is reasonably necessary to form, participate in, or take any action in furtherance of a qualified risk-sharing joint arrangement or a qualified clinically-integrated joint arrangement, or that solely involves hospitals in the same hospital system, so long as the arrangement does not include more than one Respondent Owner PHO or more than one Respondent IPA, and so long as the arrangement does not restrict the ability, or facilitate the refusal, of hospitals that participate in it to deal with payors on an individual basis or through any other arrangement.

IV.

IT IS FURTHER ORDERED that:

- A. Each Respondent Owner PHO and each Respondent IPA that has formed a qualified risk-sharing joint arrangement or a qualified clinically-integrated joint arrangement (“Arrangement”) shall, for five (5) years from the date this Order becomes final, notify the Secretary of the Commission in writing (“Notification”) at least sixty (60) days prior to:
 - 1. Participating in, organizing, or facilitating any discussion or understanding with or among any physicians or hospitals in such Arrangement relating to price or other terms or conditions of dealing with any payor; or

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2. Contacting a payor, pursuant to an Arrangement to negotiate or enter into any agreement concerning price or other terms or conditions of dealing with any payor, on behalf of any physician or hospital in such Arrangement. Notification is not required for contacts with subsequent payors pursuant to any Arrangement for which this Notification was given;
- B. With respect to any Arrangement, each Respondent Owner PHO and each Respondent IPA shall include the following information in the Notification:
1. For each physician participant, his or her name, address, telephone number, medical specialty, medical practice group, if applicable, and the name of each hospital where he or she has privileges;
 2. For each hospital participant, the hospital name and the name and telephone number of the person responsible for that hospital participant's relationship with that Respondent;
 3. A description of the Arrangement and its purpose, function, and geographic area of operation;
 4. A description of the nature and extent of the integration and the efficiencies resulting from the Arrangement;
 5. An explanation of how any agreement on prices (or on contract terms related to price) furthers the integration and achieves the efficiencies of the Arrangement;
 6. A description of any procedures proposed to be implemented to limit possible anticompetitive effects resulting from the Arrangement or its activities; and
 7. All studies, analyses, and reports that were prepared for the purpose of evaluating or analyzing competition for

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physician or hospital services in any relevant market, including, but not limited to, the market share of physician services in any relevant market or the market share of hospital services in any relevant market;

- C. If, within sixty (60) days from the Commission's receipt of the Notification, a representative of the Commission makes a written request for additional information to a Respondent Owner PHO or to a Respondent IPA, that Respondent Owner PHO or Respondent IPA shall not engage in any conduct described in Paragraph IV.A. prior to the expiration of thirty (30) days after substantially complying with such request for additional information, or such shorter waiting period as may be granted in writing from the Bureau of Competition. The expiration of any waiting period described herein without a request for additional information or without the initiation of an enforcement proceeding shall not be construed as a determination by the Commission, or its staff, that a violation of the law, or of this Order, may not have occurred. Further, receipt by the Commission from a Respondent Owner PHO or a Respondent IPA of any Notification of an Arrangement is not to be construed as a determination by the Commission that any such Arrangement does or does not violate this Order or any law enforced by the Commission, including, but not limited to, Sections 7 and 7A of the Clayton Act, 15 U.S.C. §§ 18 and 18a.

V.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date on which this Order becomes final:

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1. Respondent SGHP shall send by first-class mail, with delivery confirmation, a copy of this Order and the Complaint to:
 - a. each physician and hospital that participates or has participated in Respondent SGHP; and
 - b. each officer, director, manager, and employee of Respondent SGHP;
2. Each Respondent Owner PHO shall send by first-class mail, with delivery confirmation, a copy of this Order and the Complaint to:
 - a. each physician and hospital that participates or has participated in that Respondent Owner PHO and has not been sent this required notice by Respondent SGHP; and
 - b. each officer, director, manager, and employee of that Respondent Owner PHO;
3. Respondent SGHP shall send by first-class mail, return receipt requested, copies of this Order, the Complaint, and the notice specified in Appendix A to this Order to the chief executive officer of each payor with which the Respondent SGHP has a record of having been in contact since January 1, 1995, regarding contracting for the provision of physician or hospital services;
4. Each Respondent Owner PHO shall send by first-class mail, return receipt requested, copies of this Order, the Complaint, and the notice specified in Appendix A to this Order to the chief executive officer of each payor with which the Respondent Owner PHO has a record of having been in contact since January 1, 1995, regarding

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contracting for the provision of physician or hospital services and that has not been sent this required notice from Respondent SGHP;

- B. Each Respondent having a preexisting contract with any payor for the provision of physician or hospital services shall terminate, without penalty or charge, and in compliance with any applicable laws of the State of Georgia, that preexisting contract at the earlier of: (1) the termination or renewal date (including any automatic renewal date) of such contract; or (2) receipt by Respondent of a written request to terminate such contract from any payor that is a party to the preexisting contract;
- C. For three (3) years from the date this Order becomes final, each Respondent shall:
 - 1. Distribute by first-class mail, return receipt requested, a copy of this Order and the Complaint to:
 - a. each physician or hospital that begins participating in Respondent and did not previously receive a copy of this Order and the Complaint, within thirty (30) days of the time that such participation begins;
 - b. each payor that contracts with such Respondent for the provision of physician or hospital services and did not previously receive a copy of this Order and the Complaint, within thirty (30) days of the time that such payor enters into such contract;
 - c. each person who becomes an officer, director, manager, or employee of such Respondent and did not previously receive a copy of this Order and the Complaint, within thirty (30) days of the time that he or she assumes such responsibility with such Respondent; and

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2. Annually publish a copy of this Order and the Complaint in an official report or newsletter sent to all physicians and hospitals that participate in any Respondent, with such prominence as is given to regularly featured articles;
- D. Each Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in such Respondent, such as dissolution, assignment, sale resulting in the emergence of a successor company or corporation, the creation or dissolution of subsidiaries, or any other change in such Respondent that may affect compliance obligations arising out of this Order; and
- E. Each Respondent shall file verified written reports within sixty (60) days after the date this Order becomes final, annually thereafter for three (3) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may by written notice require. Each report shall include:
1. A detailed description of the manner and form in which such Respondent has complied and is complying with this Order;
 2. The name, address, and telephone number of each payor with which such Respondent has had any contact; and
 3. Copies of the signed return receipts and delivery confirmation required by this Paragraph V.

VI.

IT IS FURTHER ORDERED that each Respondent shall notify the Commission of any change in its respective principal address within twenty (20) days of such change in address.

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VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, each 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 its possession, or under its control, relating to any matter contained in this Order; and
- B. Upon five (5) days' notice to Respondent, and in the presence of counsel, and without restraint or interference from it, to interview officers, directors, or employees of Respondent.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on October 31, 2023.

By the Commission, Commissioner Harbour not participating.

Decision and Order

Appendix A

[letterhead of Respondent sending letter]

[name of payor's CEO]
[address]

Dear _____:

Enclosed is a copy of a complaint and a consent order issued by the Federal Trade Commission against South Georgia Health Partners (SGHP) and eight other organizations.

Pursuant to Paragraph V.B. of the order, you have the immediate right, upon written request, to terminate any contracts with SGHP or the other organizations subject to this order that were in effect prior to the receipt of this letter, without penalty or charge. In accordance with Paragraph V.B., any contract that you do not thus terminate will end at its termination or renewal date (including any automatic renewal date).

Sincerely,

Analysis

**Analysis of Agreement Containing Consent Order to Aid
Public Comment**

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order with South Georgia Health Partners, L.L.C. (“SGHP”), five other physician-hospital organizations (“PHOs”), and three independent practice associations (“IPAs”). The agreement settles charges that these nine respondents violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, by facilitating and implementing agreements among SGHP’s members to fix prices and other terms of dealing with employers, health insurance firms, and other third-party payors (“payors”) for physician and hospital services, and to refuse to deal with payors except on collectively determined terms. The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify their terms in any way. The proposed consent order has been entered into for settlement purposes only and does not constitute an admission by any respondent that said respondent violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

The Complaint Allegations

According to the Commission’s complaint, SGHP is a for-profit PHO, the membership of which includes competing hospitals and competing physicians. All its members are located in a region of south Georgia. Through SGHP, the members bargain collectively for higher prices for hospital and physician

Analysis

services. SGHP consists of approximately 500 physicians, as well as 15 hospitals with a total of over 2,200 staffed beds. With one exception, SGHP's member hospitals are the sole hospitals in each of the 15 counties where they are located. SGHP's member physicians constitute approximately 90% of all physicians who practice in the area.

Five respondents – each itself a PHO (the “Owner PHOs”) – own equal shares of SGHP: Health Alliance of the South, South Georgia PHO, Coastal Plains Health Alliance, Colquitt County PHO, and Satilla HealthNet. Each has equal representation on SGHP's Board of Directors. The three IPA respondents – Qualicare Physicians Association, South Georgia Physician Network, and Colquitt County Physicians – are the physician components of three of the owner PHOs. The complaint alleges that these eight respondents, with and through SGHP, agreed to fix physician and hospital prices.

Physicians sometimes join IPAs, and physicians and hospitals sometimes form PHOs, to market jointly their health care services to payors or engage in other collective activities. Such organizations may not lawfully orchestrate agreements among their members on the prices to demand from payors, unless the members are integrated in a manner that creates significant efficiencies such as lower costs, and unless the price agreements are reasonably necessary to obtain those efficiencies. According to the complaint, neither SGHP, nor any other respondent, engaged in such integration so as to justify their price-fixing activities.

The complaint further alleges that, with respect to physician services, SGHP required payors to meet a single, fixed price list applicable to all physician members. The prices that SGHP demanded are substantially higher than the physicians could have obtained by negotiating unilaterally. When payors approached them directly in efforts to engage in contract negotiations, SGHP's physician members repeatedly refused to deal unilaterally, and

Analysis

instructed the payors to negotiate with SGHP for collective contracting purposes.

With respect to hospital services, the complaint alleges that SGHP orchestrated agreements among its hospital members not to discount from their respective list prices by an amount greater than 10%, and repeatedly refused payor requests during contract negotiations for larger discounts for specific SGHP member hospitals or combinations of member hospitals. SGHP successfully resisted payor attempts to contract separately with individual member hospitals. It also fostered agreements among its members to refuse payor requests for hospital services payable on the basis of a per diem (set charge per day for a particular inpatient service) or per case (set charge for a particular type of case, including “diagnosis related groups” or “DRGs”). These are methods that can make pricing more certain and provide incentives for hospitals to use resources more efficiently.

SGHP also allegedly orchestrated agreements among its member hospitals to participate only in SGHP’s contract arrangements with payors. A hospital that wanted to deal with a payor outside of SGHP needed authorization from 75% of SGHP’s board to do so. SGHP further required that, if the board authorized a member hospital to contract independently from SGHP, the hospital not discount from its list prices by more than 10% – unless the hospital provided that larger discount to every payor with which it was under contract through SGHP. This agreement created a substantial disincentive for any member hospital to deviate from the SGHP price agreement, because, by lowering prices to one payor, the hospital would have to do so for all payors that had contracts with the hospital.

Eight of the nine respondents are for-profit entities. The other respondent, Satilla HealthNet, is a non-profit corporation, but one that engages in substantial activities that confer pecuniary benefits on its for-profit physician members. The Commission has jurisdiction, therefore, over all respondents.

Analysis

The Proposed Consent Order

The proposed order is designed to remedy the illegal conduct charged in the complaint and prevent its recurrence, while allowing respondents to engage in legitimate conduct that does not impair competition. It is similar to many previous consent orders that the Commission has issued to settle charges relating to unlawful agreements to raise prices. The proposed order applies to both hospital and physician services.

The proposed order's specific provisions are as follows:

The proposed order's core prohibitions are contained in Paragraphs II and III. Paragraph II.A prohibits respondents from entering into or facilitating any agreement between or among any physicians: (1) to negotiate with payors on any physician's behalf; (2) to deal, refuse to deal, or threaten to refuse to deal with payors; (3) on what terms to deal with any payor; or (4) not to deal individually with any payor, or not to deal with any payor through an arrangement other than respondents.

Paragraph II.B prohibits respondents from facilitating exchanges of information between physicians concerning whether, or on what terms, to contract with a payor. Paragraph II.C bans them from attempting to engage in any action prohibited by Paragraph II.A or II.B. Paragraph II.D prohibits them from inducing anyone to engage in any action prohibited by Paragraphs II.A through II.C.

Paragraph II also contains a proviso intended to clarify certain types of agreements that Paragraph II does not prohibit, except as to SGHP. It provides that nothing in Paragraph II prohibits the Owner PHO and IPA respondents from engaging in conduct that is reasonably necessary to form, participate in, or act in furtherance of, a "qualified risk-sharing joint arrangement" or a "qualified clinically-integrated joint arrangement." Such arrangements must not include another Owner PHO or IPA, and they must not be exclusive. As discussed below in connection

Analysis

with Paragraph IV, each respondent is required to notify the FTC about such an arrangement before negotiating on behalf of its members or before its members jointly discuss any terms of dealing with a payor.

As defined in the proposed order, a “qualified risk-sharing joint arrangement” must satisfy two conditions. First, all physician or hospital participants must share substantial financial risk through the arrangement and thereby create incentives for the physician or hospital participants jointly to control costs and improve quality by managing the provision of services. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement.

As defined in the proposed order, a “qualified clinically-integrated joint arrangement” also must satisfy two conditions. First, all physician or hospital participants must participate in active and ongoing programs to evaluate and modify their clinical practice patterns, creating a high degree of interdependence and cooperation among physicians and/or hospitals, in order to control costs and ensure the quality of services provided. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement.

Paragraph III is substantially identical to Paragraph II, except that it applies to the provision of hospital, rather than physician, services.

Paragraph IV requires an Owner PHO or IPA respondent that has formed a qualified risk-sharing joint arrangement or a qualified clinically-integrated joint arrangement to notify the Commission at least 60 days prior to negotiating or entering into agreements with payors, or discussing price or related terms among the participants of the arrangement. Paragraph IV.B sets out the information necessary to make the notification complete.

Analysis

Paragraph IV.C establishes the Commission's right to obtain additional information regarding the arrangement.

Paragraphs V.A, V.B, and V.C set out the requirement that SGHP or Owner PHO respondents send the Order, the Complaint, and a letter of notice to each payor with which SGHP or an Owner PHO has been in contact since January 1, 1995. This notice provision, set out in Appendix A, will inform payors that any contract with SGHP may be terminated at the payor's written request, per Paragraph V.B. Absent such written request, however, Paragraph V.B provides that all such contracts will terminate upon their termination or renewal date. This provision is intended to eliminate the effects of respondents' anticompetitive concerted actions. The remaining provisions of Paragraph V and Paragraphs VI through VIII of the proposed order impose obligations on respondents with respect to distributing the proposed complaint and order to SGHP's members and to other specified persons, and reporting information to the Commission.

The proposed order will expire in 20 years.

Complaint

IN THE MATTER OF

NESTLÉ HOLDINGS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE
COMMISSION ACT

*Docket C-4082; File No. 0210174
Complaint, June 25, 2003--Decision, November 6, 2003*

This consent order addresses an agreement between Respondent Nestlé Holdings, Inc. -- a subsidiary of Nestle S.A., the world's largest food company -- and Respondent Dreyer's Grand Ice Cream Holdings, Inc. to combine their ice cream businesses. The order, among other things, requires the respondents to divest (1) all assets, businesses, and goodwill related to the manufacture, marketing, or sale of the Dreamery, Godiva and Whole Fruit brands, and (2) all assets related to Nestlé's distribution of frozen dessert products, to CoolBrands International, Inc. or another acquirer approved by the Commission. An accompanying Order to Maintain Assets requires the respondents to maintain the viability and marketability of the assets to be divested. In addition, the order requires the respondents, for one year, to supply CoolBrands with the types and quantities of Dreamery, Godiva, and Whole Fruit products that it requests at a price no greater than the respondents' production costs. The order also requires the respondents, at the request of CoolBrands, for one year to distribute Dreamery, Godiva, and Whole Fruit for CoolBrands in any areas of the U.S. where Respondent Dreyer's previously distributed these products.

Participants

For the Commission: *Renee S. Henning, Jill M. Frumin, Shai A. Littlejohn, Christopher L. Marvine, Samuel I. Sheinberg, Jeanne H. Liu, Catharine M. Moscatelli, Michael G. Cowie, Kenneth A. Libby, Eric D. Rohlck,, Daniel P. Ducore,, Michael Vita, Haj Hadeishi, David Schmidt, Gabe Dagen, and Art Del Buono.*

For the Respondents: *James Rill, Roxann E. Henry, John G. Calender, and Oral Pottinger, Howrey Simon Arnold & White, and Ilene Gotts and Joseph D. Larson, Wachtell, Lipton, Rosen & Katz.*