

Complaint

IN THE MATTER OF

HEALTH CARE ALLIANCE OF LAREDO, L.C.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-4158; File No. 0410097**Complaint, March 23, 2006--Decision, March 23, 2006*

This consent order addresses actions of Health Care Alliance of Laredo, L.C., in orchestrating and implementing agreements among its physician members to fix prices and other terms on which they would deal with health plans, and to refuse to deal with such purchasers except on collectively determined terms. Health Care Alliance forced numerous health plans to raise the fees paid to its physician members, and thereby raised the cost of medical care in the Laredo, Texas, area. The order requires the respondent to cease and desist from entering into or facilitating any agreement between or among any physicians (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, or (4) not to deal individually with any payor, or not to deal with any payor through any arrangement other than Health Care Alliance. The order requires the respondent, for three years, to notify the Commission before entering into any arrangement to act as a messenger, or as an agent on behalf of any physicians, with payors regarding contracts. The respondent is not precluded from engaging in conduct that is reasonably necessary to form or participate in legitimate joint contracting arrangements among competing physicians. The order also requires the respondent to distribute the complaint and order to all physicians who have participated in Health Care Alliance, and to payors that negotiated contracts with it or indicated an interest in doing so. In addition, the respondent is required, at any payor's request and without penalty, to terminate its current contracts with respect to providing physician services.

Participants

For the Commission: *John DeGeeter, Daniel P. Ducore, Tom Iosso, David R. Pender, Connie Salemi, Anne Schenof, and Louis Silvia.*

For the Respondent: *Gary Hall, Esq.*

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission (“Commission”), having reason to believe that Health Care Alliance of Laredo, L.C. (“HAL”), hereinafter sometimes referred to as “Respondent,” has violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges in that respect as follows:

NATURE OF THE CASE

1. This matter concerns agreements among competing physicians, acting through the Respondent, to fix the prices they charge to health plans and other third-party payors (“payors”), and to refuse to deal with payors except on collectively agreed upon terms. The Respondent had no legitimate justification for these agreements, which increased consumer health care costs in the Laredo, Texas, area.

RESPONDENT

2. HAL, an independent practice association (“IPA”), is a for-profit limited liability company, organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its principal address at 230 Calle Del Norte, Laredo, Texas 78041.

3. HAL contracts with payors on behalf of its member physicians and establishes uniform prices and other contract terms applicable to its members.

4. HAL members include approximately 80 physicians licensed to practice allopathic or osteopathic medicine in Texas.

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5. HAL's nine-member Board of Managers consists of physicians who are elected by the HAL members to represent the members' interests in HAL's affairs.

JURISDICTION

6. At all times relevant to this Complaint, HAL has been engaged in the business of contracting with payors, on behalf of HAL's physician members, for the provision of physician services.

7. Except to the extent that competition has been restrained as alleged herein, a substantial majority of HAL physician members have been, and are now, in competition with each other for the provision of physician services in the Laredo, Texas, area.

8. HAL, a for-profit entity, is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

9. The general business practices of HAL, and of its physician members, including the acts and practices herein alleged, are in or affect "commerce" as defined in the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

OVERVIEW OF PHYSICIAN CONTRACTING WITH PAYORS

10. Physicians contract with payors to establish the terms and conditions, including price terms, under which they render physician services to the subscribers ("insureds") to the payors' health plans. Physicians entering into such contracts often agree to lower compensation to obtain access to additional patients made available by the payors' relationship with insureds. These contracts may reduce payors' costs and enable them to lower the price of insurance, and thereby result in lower medical care costs for insureds.

11. Absent agreements among them, otherwise competing

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physicians unilaterally decide whether to enter into payor contracts to provide services to insureds, and what prices they will accept pursuant to such contracts.

12. The Medicare Resource Based Relative Value Scale (“RBRVS”) is a system used by the Centers for Medicare and Medicaid Services to determine the amount to pay physicians for the services they render to Medicare patients. Generally, payors in Texas make contract offers to individual physicians or groups at price levels specified by some percentage of the RBRVS fee for a particular year (e.g., “110% of 2004 RBRVS”).

ANTICOMPETITIVE CONDUCT

13. HAL, acting as a combination of its physician members, and in conspiracy with its members, has acted to restrain competition by, among other things, facilitating, entering into, and implementing agreements, express or implied, to fix the prices and other terms at which they would contract with payors; to engage in collective negotiations over terms and conditions of dealing with payors; and to have HAL members refrain from negotiating individually with payors or contracting on terms other than those approved by HAL.

14. HAL refers to its contracting system as a “messenger model.” Competing physicians sometimes use a “messenger” to facilitate their contracting with payors, in ways that do not constitute an unlawful agreement on prices and other competitively significant terms. Messenger arrangements can reduce contracting costs between payors and physicians. A messenger can be an efficient conduit to which a payor submits a contract offer, with the understanding that the messenger will transmit that offer to a group of physicians and inform the payor how many physicians across specialties accept the offer or have a counteroffer. A messenger may not negotiate prices or other competitively significant terms, however, and may not facilitate coordination among physicians on their responses to contract offers.

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15. Although purporting to employ a messenger model, from 1998 to 2005, HAL attempted to and did negotiate higher reimbursement rates for its member physicians, sent payor offers to members only after HAL negotiated and approved the rates, and urged its members not to deal individually with payors.

16. HAL's Board of Managers authorized and directed each step of the contracting process with payors. The Board initiated negotiations with payors by directing HAL personnel to contact a payor or by authorizing HAL personnel to respond to a payor inquiry. The Board required HAL personnel to report to the Board on the progress of negotiations and to seek authorization from the Board before making counterproposals. Ultimately, the Board either accepted or rejected contracts which HAL personnel presented to it. If the Board accepted the contract, HAL would then, and only then, "messenger" the contract to HAL's members for their individual acceptance or rejection. HAL did not messenger any rates proposed by the payors during negotiations, and messengered only the rates that the Board approved.

17. HAL members were fully aware of the payor negotiations HAL was conducting on their behalf. HAL's staff provided updates on the status of contract negotiations to members via telephone, monthly newsletters, and monthly meetings, at which contracts were frequently an important agenda item.

18. HAL members often had direct input in payor negotiations, aside from their representation on the Board. For example, in 1999, HAL's Executive Director sent out a survey to members asking them for "the 20 most common codes used in the office and the maximum discount that you are willing to accept." The Executive Director explained that "[t]his will help me when I negotiate contracts on behalf of the organization, since I would present these codes as those for which I will seek the advantageous rates." He also surveyed Board members and spoke to individual members in order to obtain information on fees for their respective specialties, which he used in negotiations with payors. Further, Board members were generally representative of the physician specialties within

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HAL, and Board members discussed the rate proposals with other members in their specialty when the rates affected their specialty.

**NEGOTIATIONS WITH UNITED HEALTHCARE OF
TEXAS, INC. (“UNITED”)**

19. In the summer of 2003, United was attempting to form a physician network in the Laredo area by contracting individually with area physicians, including HAL’s physicians. When HAL learned of this, it informed United that HAL represented a number of Laredo physicians and that any rates would have to be first approved by HAL’s Board. Despite being warned by United of the antitrust ramifications of such joint negotiations, HAL negotiated the rates with United’s local representative and sent United’s offer to HAL members, many of whom accepted it, only after HAL’s Board approved United’s offer.

20. HAL’s President later sent a memo to members urging them not to sign individual contracts with Aetna, noting that members should let HAL work on Aetna “similar to what we did with UNITED HEALTHCARE where they were offering . . . individual contracts, but we worked out [a] group contract” at rates that were 30% higher than United’s individual contract offers.

**NEGOTIATIONS WITH AETNA HEALTH, INC.
 (“AETNA”)**

21. In July of 2003, Aetna began soliciting physicians to join a network it was attempting to establish in Laredo. After learning of this, HAL contacted Aetna and informed Aetna that HAL would negotiate and contract for the HAL physicians. At the same time, HAL began to urge its members not to deal individually with Aetna. HAL’s then-President sent a memo addressed to “All HAL Members” and captioned with “**UPDATE - PLEASE READ**” and “**IMPORTANT**”:

Regarding AETNA we know many are receiving

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individual contracts. We have contacted AETNA and will try to negotiate a group contract for the benefit of all of us.

PLEASE DO NOT sign individual contract[s] with very low reimbursement rates. Let us work on this similar to what we did with UNITED HEALTHCARE where they were offering . . . individual contracts, but we worked out [a] group contract [at rates that were 30% higher than United's individual contract offers].

22. Aetna warned HAL that its conduct potentially violated the antitrust laws, noting that “you may also be aware that the Federal Trade Commission has been interested in cases involving price fixing by physicians.”

23. Nonetheless, HAL proceeded to negotiate a contract with Aetna. Aetna initially provided HAL with its standard market fee schedule, known as the Aetna Market Fee Schedule (“AMFS”). HAL rejected Aetna’s offer because the rates in the AMFS were “no where close” to HAL’s demanded RBRVS rate.

24. Aetna ultimately succumbed and offered the RBRVS-based rate demanded by HAL, which was, depending on the particular billing code, between 20% and 90% higher than Aetna’s initial offer. HAL then, for the first time, sent out Aetna’s offer to its members, many of whom accepted the group-negotiated rates.

BOYCOTT OF PACIFICARE OF TEXAS (“PACIFICARE”)

25. HAL sought to negotiate with PacifiCare in 2003, and boycotted PacifiCare after PacifiCare declined to do so. In the spring of 2003, PacifiCare was attempting to form its own network of providers by offering contracts to individual physicians in Laredo. Up until that time, PacifiCare was renting the provider network of Private Healthcare Systems, Inc. (“PHCS”), a third-party administrator, to service its customers. PHCS, in turn, had a contract with HAL, which set the prices HAL members received for seeing

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PacifiCare patients.

26. PacifiCare's individual contracting efforts were a significant threat to HAL physicians, because HAL's rates through PHCS were significantly higher than PacifiCare's individual contract rate.

27. In May 2003, HAL's Board authorized HAL personnel to negotiate a group contract with PacifiCare. After PacifiCare refused to negotiate with HAL, HAL urged its physician members not to sign up with PacifiCare. HAL reminded them that they already had access to PacifiCare patients through PHCS, and that they would continue to have access to PacifiCare patients, even if they did not sign the lower-paying PacifiCare contracts. When PacifiCare contacted individual HAL members to offer them contracts, PacifiCare was repeatedly told by HAL members that HAL had instructed them not to contract with PacifiCare, that HAL told them it was attempting to negotiate a group contract with PacifiCare, and that PacifiCare would have to deal with HAL. A year after starting efforts to obtain contracts with individual physicians, PacifiCare had signed individual contracts with only ten HAL members, though PacifiCare's individual contract rates were sufficient to gain acceptance by many non-HAL members in Laredo.

CONTRACTING WITH OTHER PAYORS

28. HAL, on behalf of its physician members, has also orchestrated collective negotiations with other payors who do business, or have attempted to do business, in the Laredo, Texas, area, including Preferred Health Arrangement, Inc.; TML Intergovernmental Employee Benefits Pool; Humana; HealthSmart Preferred Care, Inc.; Advantage Care Network, Inc.; COASTALCOMP HEALTHNETWORKS®; MultiPlan, Inc.; National Healthcare Alliance, Inc.; Texas True Choice, Inc.; Texas Employers Associated Medical Services, Inc.; and Private Healthcare Systems, Inc. HAL negotiated with these payors on price, making proposals and counter-proposals, as well as accepting or rejecting offers, without transmitting the payors' offers to HAL

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members until HAL's Board of Managers approved the negotiated prices.

29. These coercive tactics were successful in raising the prices paid to HAL's physician members.

RESPONDENT'S PRICE-FIXING IS NOT JUSTIFIED

30. The physician members of HAL have not integrated their practices in any economically significant way, nor have they created efficiencies sufficient to justify their acts or practices described in the foregoing paragraphs 13 through 29.

RESPONDENT'S ACTIONS HAVE HAD SUBSTANTIAL ANTICOMPETITIVE EFFECTS

31. Respondent's actions described in Paragraphs 13 through 29 of this Complaint have had, or tend to have had, the effect of restraining trade unreasonably and hindering competition in the provision of physician services in the Laredo area in the following ways, among others:

- a. price and other forms of competition among physician members of HAL were unreasonably restrained;
- b. prices for physician services were increased; and
- c. health plans, employers, and individual consumers were deprived of the benefits of competition among physicians.

VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

32. The combination, conspiracy, acts, and practices described above constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. Such combination, conspiracy, acts, and practices, or the effects

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thereof, are continuing and will continue or recur in the absence of the relief herein requested.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this thirtieth day of March 2006, issues its Complaint against Respondent HAL.

By the Commission.

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DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of certain acts and practices of the Health Care Alliance of Laredo, L.C. (“HAL”), hereinafter sometimes referred to as “Respondent,” and HAL having been furnished with a copy of the draft Complaint that Counsel for the Commission proposed to present to the Commission for its consideration and which, if issued, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order to Cease and Desist (“Consent Agreement”), containing an admission by Respondent 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 Respondent 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 this matter and having determined that it had reason to believe that Respondent has violated the 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 public record for a period of thirty (30) days for the receipt and consideration of public comments, 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 HAL is a for-profit limited liability company, organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its

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principal address located at 230 Calle Del Norte, Laredo, Texas 78041.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent, and the proceeding is in the public interest.

ORDER**I.**

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Respondent HAL” means Health Care Alliance of Laredo, L.C., its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- B. “Hospital” means a health care facility licensed by any state as a hospital.
- C. “Medical Group Practice” means a bona fide, integrated firm in which physicians practice together as partners, shareholders, owners, or employees, or in which only one physician practices.
- D. “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.”

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- E. “Payor” means any person that pays, or arranges for payment, for all or any part of any physician services for itself or for any other person. Payor includes any person that develops, leases, or sells access to networks of physicians.
- F. “Person” means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.
- G. “Physician” means a doctor of allopathic medicine (“M.D.”) or a doctor of osteopathic medicine (“D.O.”).
- H. “Preexisting contract” means a contract for the provision of physician services that was in effect on the date of the receipt by a payor that is a party to such contract of notice sent by Respondent HAL, pursuant to Paragraph V.A.3 of this Order, of such payor’s right to terminate such contract.
- I. “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.
- J. “Qualified clinically-integrated joint arrangement” means an arrangement to provide physician services in which:
 - 1. all physicians 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 that participate in the arrangement, in order to control costs and ensure the quality of services provided through the arrangement; and

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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.
- K. “Qualified risk-sharing joint arrangement” means an arrangement to provide physician services in which:
1. all physicians that participate in the arrangement share substantial financial risk through their participation in the arrangement and thereby create incentives for the physicians that participate jointly to control costs and improve quality by managing the provision of physician services, such as risk-sharing involving:
 - a. the provision of physician services to payors at a capitated rate,
 - b. the provision of physician services for a predetermined percentage of premium or revenue from payors,
 - c. the use of significant financial incentives (*e.g.*, substantial withholds) for physicians 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 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,

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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 Respondent HAL, 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:
 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 HAL;
- B. Exchanging or facilitating in any manner the exchange or transfer of information between or among physicians

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concerning any physician's willingness to deal with a payor, or the terms or conditions, including any price terms, on which the physician is willing to deal with a payor;

- C. Attempting to engage in any action prohibited by Paragraphs 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, subject to the requirements of Paragraph IV of this Order, nothing in this Paragraph II shall prohibit any agreement involving, or any conduct 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 that does not restrict the ability, or facilitate the refusal, of physicians who participate in it to deal with payors on an individual basis or through any other arrangement, or that solely involves physicians in the same medical group practice.

III.

IT IS FURTHER ORDERED that, for three (3) years after the date this Order becomes final, Respondent HAL shall notify the Secretary of the Commission in writing ("Paragraph III Notification") at least sixty (60) days prior to entering into any arrangement with any physicians or any medical group practices under which Respondent HAL would act as a messenger, or as an agent on behalf of those physicians or those medical group practices, with payors regarding contracts. The Paragraph III Notification shall include the identity of each proposed physician participant; the proposed geographic area in which the proposed arrangement will operate; a copy of any proposed physician participation agreement;

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a description of the proposed arrangement's purpose and function; a description of any resulting efficiencies expected to be obtained through the arrangement; and a description of procedures to be implemented to limit possible anticompetitive effects, such as those prohibited by this Order. If, within fifteen (15) days from the Commission's receipt of the Paragraph III Notification, a representative of the Commission makes a written request for additional information to Respondent HAL, then Respondent HAL shall not engage in any conduct described in Paragraph III of this Order prior to the expiration of sixty (60) days after substantially complying with such request for additional information.

Provided, however, that written confirmation reducing the applicable waiting period may be granted, upon request to 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.

Provided further that Paragraph III Notification is not required for Respondent HAL to inform any physicians that a payor has exercised its right, pursuant to the first proviso of Paragraph V.D of the Order, to extend the term of its contract, nor is Paragraph III Notification required for Respondent HAL's subsequent acts as a messenger pursuant to an arrangement for which this Paragraph III Notification has been given.

Receipt by the Commission of any Paragraph III Notification is not to be construed as a determination by the Commission that any action described in such Paragraph III Notification does or does not violate this Order or any law enforced by the Commission.

IV.

IT IS FURTHER ORDERED that, for three (3) years from the date this Order becomes final, pursuant to each qualified clinically-integrated joint arrangement or qualified risk-sharing joint

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arrangement (“Arrangement”) in which Respondent HAL is a participant, Respondent HAL shall notify the Secretary of the Commission in writing (“Paragraph IV Notification”) at least sixty (60) days prior to:

- A. Participating in, organizing, or facilitating any discussion or understanding with or among any physicians or medical group practices in such Arrangement relating to price or other terms or conditions of dealing with any payor; or
- B. Contacting a payor, pursuant to an Arrangement, to negotiate or enter into any agreement relating to price or other terms or conditions of dealing with any payor, on behalf of any physician in such Arrangement.

Provided, however, that Paragraph IV Notification shall not be required for an Arrangement whenever such Notification has been previously given for that Arrangement.

Provided further:

1. that with respect to any Paragraph IV Notification, Respondent HAL shall include the following information:
 - a. the identity of each physician participant, the medical or other physician specialty, group practice, if applicable, and the name of each hospital where the physician has privileges;
 - b. a description of the Arrangement and its purpose, function, and geographic area of operation;
 - c. a description of the nature and extent of the integration and the efficiencies resulting from the Arrangement;

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- d. an explanation of how any agreement on prices, or on contract terms related to price, furthers the integration and achievement of the efficiencies resulting from the Arrangement;
 - e. a description of any procedures proposed to be implemented to limit possible anticompetitive effects resulting from the Arrangement or its activities; and
 - f. all studies, analyses, and reports that were prepared for the purpose of evaluating or analyzing competition for physician services in the Laredo, Texas area, including, but not limited to, the market share of physician services in such market; and
2. if, within sixty (60) days from the Commission's receipt of the Paragraph IV Notification, a representative of the Commission makes a written request for additional information to Respondent HAL, then Respondent HAL shall not engage in any conduct described in Paragraph IV.A or Paragraph IV.B of this Order 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 Respondent HAL of any Paragraph IV Notification is not to be construed as a determination by the Commission that any such Arrangement does or does

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not violate this Order or any law enforced by the Commission.

V.

IT IS FURTHER ORDERED that Respondent HAL shall:

- A. Within thirty (30) days after the date on which this Order becomes final, send a copy of this Order and the Complaint by:
 - 1. first-class mail, with return receipt requested or delivery confirmation, or electronic mail, with return confirmation, to each physician that participates in Respondent HAL;
 - 2. first-class mail, with return receipt requested or delivery confirmation, or electronic mail, with return confirmation, to each present officer, director, manager, and employee of Respondent HAL; and
 - 3. first-class mail, return receipt requested, and with the letter attached as Appendix A to this Order, to the chief executive officer of each payor with whom Respondent HAL has a record of being in contact since January 1, 2001, regarding contracting for the provision of physician services; *provided, however*, that a copy of Exhibit A need not be included in the mailings to those payors with whom Respondent HAL has not entered into or renewed (including any automatic renewal of) a contract since January 1, 2001.
- B. For a period of three (3) years after the date this Order becomes final:

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1. Distribute a copy of this Order and the Complaint by:
 - a. first-class mail, with return receipt requested or delivery confirmation, or electronic mail, with return confirmation, to each physician that begins participating in Respondent HAL, and that did not previously receive a copy of this Order and the Complaint from Respondent HAL, within thirty (30) days of the day that such participation begins;
 - b. first-class mail, return receipt requested, to each payor that contracts with Respondent HAL for the provision of physician services, and that did not previously receive a copy of this Order and the Complaint from Respondent HAL, within thirty (30) days of the day that such payor enters into such contract;
 - c. first-class mail, with return receipt requested or delivery confirmation, or electronic mail, with return confirmation, to each person who becomes an officer, director, manager, or employee of Respondent HAL, and who did not previously receive a copy of this Order and the Complaint from Respondent HAL, within thirty (30) days of the day that he or she assumes such responsibility with Respondent HAL; and
 2. Annually publish a copy of this Order and the Complaint in an official annual report or newsletter sent to all physicians who participate in Respondent HAL, with such prominence as is given to regularly featured articles.
- C. File a verified written report within sixty (60) days after the date on which this Order becomes final, annually thereafter for three (3) years on the anniversary of the

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date this Order becomes final, and at such other times as the Commission may by written notice require. Each such report shall include:

1. A detailed description of the manner and form in which Respondent HAL has complied and is complying with this Order;
 2. The name, address, and telephone number of each payor with which Respondent HAL has had any contact; and
 3. Copies of the delivery confirmations or electronic mail confirmations required by Paragraphs V.A.1, V.A.2, V.B.1.a and V.B.1.c of this Order, and copies of the signed return receipts required by Paragraphs V.A.3, V.B.1.b, and V.E of this Order.
- D. Terminate, without penalty or charge, and in compliance with any applicable laws, any preexisting contract with any payor for the provision of physician services, at the earliest of:
1. the termination date specified in a written request from a payor to Respondent HAL to terminate such contract;
 2. the earliest termination or renewal date (including any automatic renewal date) of such contract; or
 3. one year from the date this Order becomes final.

Provided, however, a preexisting contract may extend beyond any such termination or renewal date no later than one (1) year from the date that the Order becomes final if, prior to such termination or renewal date, (a) the payor submits to Respondent HAL a written request to extend such contract to a specific date

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no later than one (1) year from the date that this Order becomes final, and (b) Respondent HAL has determined not to exercise any right to terminate;

Provided further, that any payor making such request to extend a contract retains the right, pursuant to part (1) of Paragraph V.D of this Order, to terminate the contract at any time.

- E. Within ten (10) days of receiving a written request from a payor, pursuant to Paragraph V.D (1) of this Order, distribute, by first-class mail, return receipt requested, a copy of that request to each physician participating in Respondent HAL as of the date Respondent HAL receives such request.

VI.

IT IS FURTHER ORDERED that Respondent HAL shall notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of Respondent HAL, (2) acquisition, merger or consolidation of Respondent HAL, or (3) other change in Respondent HAL that may affect compliance obligations arising out of this Order, including but not limited to assignment, the creation or dissolution of subsidiaries, or any other change in Respondent HAL.

VII.

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

VIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, Respondent HAL shall permit any duly authorized representative of the Commission:

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- 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, and in the presence of counsel, and without restraint or interference from it, to interview officers, directors, or employees of the Respondent.

IX.

IT IS FURTHER ORDERED that this Order shall terminate twenty (20) years from the date it is issued.

By the Commission.

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APPENDIX A

[Letterhead of Respondent HAL]

[date]

[name and address of payor's CEO]

Dear [CEO]:

Enclosed is a copy of a complaint and a decision and order ("Order") issued by the Federal Trade Commission against Health Care Alliance of Laredo, L.C. ("HAL").

Pursuant to Paragraph V.D of the Order, HAL must allow you to terminate, upon your written request, without any penalty or charge, any contracts with HAL for the provision of physician services that are in effect as of the date you receive this letter.

If you do not make a written request to terminate the contract, Paragraph V.D further provides that the contract will terminate on the earlier of:

1. [date], the contract's termination or renewal date; or
2. [date], one year from the date the Order becomes final.

You may, however, ask HAL to extend the contract beyond [date], the termination or renewal date, to any date no later than [date], one (1) year after the date the Order becomes final.

If you choose to extend the term of the contract, you may later terminate the contract at any time.

Decision and Order

Any request either to terminate or to extend the contract should be made in writing, and sent to me at the following address: [address].

Sincerely,

[signatory]

[HAL to fill in applicable dates]

Analysis to Aid Public Comment

**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 Health Care Alliance of Laredo, L.C. (“HAL”). The agreement settles charges that HAL violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, by orchestrating and implementing agreements among physician members of HAL to fix prices and other terms on which they would deal with health plans, and to refuse to deal with such purchasers 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. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by HAL that it violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

The Complaint

The allegations of the complaint are summarized below.

HAL is a multi-specialty independent practice association (“IPA”) in the Laredo, Texas, area with approximately 80 member physicians, a substantial majority of whom are competitors of one another. HAL contracts with payors on behalf of its member physicians and thereby establishes uniform prices and other contract terms applicable to its members.

Analysis to Aid Public Comment

Although purporting to employ a “messenger model,”¹ from 1998 to 2005, HAL attempted to and did negotiate higher reimbursement rates for its member physicians, sent payor offers to its members only after HAL negotiated and approved the rates, and urged its members not to deal individually with payors.

HAL’s Board of Managers, nine physicians who are elected by and represent HAL’s physician members, authorized and directed each step of the contracting process. The Board initiated negotiations by directing HAL personnel to contact a payor. On several occasions, HAL personnel contacted payors after learning that the payors were soliciting contracts with individual physicians. HAL personnel told the payors that HAL would represent and contract on behalf of HAL’s physician members. As negotiations between payors and HAL personnel proceeded, HAL personnel were required to report to the Board on the progress of negotiations, and to seek authorization from the Board before making counterproposals. Ultimately, the Board either accepted or rejected contracts which HAL personnel presented to it. If the Board accepted the contract, HAL would then, and only then, “messenger” the contract to HAL’s members for their individual acceptance or rejection. HAL did not messenger any rates proposed by the payors during negotiations, and messengered only the rates that the Board approved.

HAL members were fully aware of the payor negotiations HAL conducted on their behalf. HAL’s staff provided updates to members on the status of contract negotiations via telephone, monthly

¹ Some arrangements can facilitate contracting between health care providers and payors without fostering an illegal agreement among competing physicians on fees or fee-related terms. One such approach, sometimes referred to as a “messenger model” arrangement, is described in the 1996 Statements of Antitrust Enforcement Policy in Health Care jointly issued by the Federal Trade Commission and U.S. Department of Justice, at 125. See <http://www.ftc.gov/reports/hlth3s.htm#9>.

Analysis to Aid Public Comment

newsletters, and monthly meetings. On several occasions, as HAL personnel were attempting to negotiate a group contract, HAL urged its members not to negotiate individually with the health plans, and significant numbers of HAL members refused to deal individually with those payors.

HAL members also had direct input in payor negotiations, aside from their representation on the Board. In 1999, HAL surveyed its members, asking them for “the 20 most common codes used in the office and the maximum discount that you are willing to accept.” HAL’s Executive Director explained that “[t]his will help me when I negotiate contracts on behalf of the organization, since I would present these codes as those for which I will seek the advantageous rates.” In addition to the 1999 survey, HAL personnel and Board members regularly solicited input on acceptable rates from HAL’s members, which were then used in negotiations with payors

HAL has orchestrated collective agreements on fees and other terms of dealing with health plans, carried out collective negotiations with health plans, and fostered refusals to deal. HAL succeeded in forcing numerous health plans to raise the fees paid to HAL physician members, and thereby raised the cost of medical care in the Laredo, Texas, area. HAL engaged in no efficiency-enhancing integration sufficient to justify joint negotiation of fees. By the acts set forth in the Complaint, HAL violated Section 5 of the FTC Act.

The Proposed Consent Order

The proposed order is designed to remedy the illegal conduct charged in the complaint and prevent its recurrence. It is similar to recent consent orders that the Commission has issued to settle charges that physician groups engaged in unlawful agreements to raise fees they receive from health plans. The proposed order’s specific provisions are as follows:

Paragraph II.A prohibits HAL 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, not to deal, or

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threaten not to deal with payors; (3) on what terms to deal with any payor; or (4) not to deal individually with any payor, or to deal with any payor only through an arrangement involving HAL.

Other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits HAL from facilitating exchanges of information between physicians concerning whether, or on what terms, to contract with a payor. Paragraph II.C bars attempts to engage in any action prohibited by Paragraph II.A or II.B, and Paragraph II.D proscribes HAL from inducing anyone to engage in any action prohibited by Paragraphs II.A through II.C.

As in other Commission orders addressing providers' collective bargaining with health care purchasers, certain kinds of agreements are excluded from the general bar on joint negotiations. HAL would not be precluded from engaging in conduct that is reasonably necessary to form or participate in legitimate joint contracting arrangements among competing physicians in a "qualified risk-sharing joint arrangement" or a "qualified clinically-integrated joint arrangement." The arrangement, however, must not facilitate the refusal of, or restrict, physicians in contracting with payors outside of the arrangement.

As defined in the proposed order, a "qualified risk-sharing joint arrangement" possesses two key characteristics. First, all physician participants must share substantial financial risk through the arrangement, such that the arrangement creates incentives for the physician 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.

A "qualified clinically-integrated joint arrangement," on the other hand, need not involve any sharing of financial risk. Instead, as defined in the proposed order, physician participants must participate in active and ongoing programs to evaluate and modify

Analysis to Aid Public Comment

their clinical practice patterns in order to control costs and ensure the quality of services provided, and the arrangement must create a high degree of interdependence and cooperation among physicians. As with qualified risk-sharing arrangements, any agreement concerning price or other terms of dealing must be reasonably necessary to achieve the efficiency goals of the joint arrangement

Paragraph III, for three years, requires HAL to notify the Commission before entering into any arrangement to act as a messenger, or as an agent on behalf of any physicians, with payors regarding contracts. Paragraph III also sets out the information necessary to make the notification complete. Paragraph IV, for three years, requires HAL to notify the Commission before participating in contracting with health plans on behalf of a qualified risk-sharing joint arrangement, or a qualified clinically-integrated joint arrangement. The contracting discussions that trigger the notice provision may be either among physicians, or between HAL and health plans. Paragraph IV also sets out the information necessary to satisfy the notification requirement.

Paragraph V requires HAL to distribute the complaint and order to all physicians who have participated in HAL, and to payors that negotiated contracts with HAL or indicated an interest in contracting with HAL. Paragraph V.D requires HAL, at any payor's request and without penalty, or, at the latest, within one year after the order is made final, to terminate its current contracts with respect to providing physician services. Paragraph V.D. also allows any contract currently in effect to be extended, upon mutual consent of HAL and the contracted payor, to any date no later than one year from when the order became final. This extension allows both parties to negotiate a termination date that would equitably enable them to prepare for the impending contract termination. Paragraph V.E requires HAL to distribute payor requests for contract termination to all physicians who participate in HAL.

Paragraphs VI, VII, and VIII of the proposed order impose various obligations on HAL to report or provide access to

Analysis to Aid Public Comment

information to the Commission to facilitate monitoring HAL's compliance with the order.

The proposed order will expire in 20 years.

Complaint

IN THE MATTER OF

ALLERGAN, INC.

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-4156; File No. 0610031
Complaint, March 7, 2006--Decision, April 17, 2006*

This consent order addresses the acquisition of Inamed Corporation by Allergan, Inc. Both companies are engaged in the research, development, manufacture, and sale of facial aesthetic products. Allergan's Botox® is the only botulinum toxin type A approved by the U.S. Food and Drug Administration for the treatment of facial wrinkles. The acquisition would eliminate the next most likely entrant in the market, Inamed's cosmetic botulinum, tentatively branded Reloxin®. The order requires the respondents to divest the Reloxin® development and distribution rights, including the ongoing clinical trials and certain intellectual property, back to Ipsen Ltd., its manufacturer, which had originally granted Inamed the exclusive rights to develop and distribute a botulinum toxin type A product. Respondents are required to provide personnel, assistance, advice, and training, at the request of Ipsen, until the Reloxin® assets are fully transferred. The order requires the respondents to ensure that confidential business information relating to Reloxin® will not be obtained or used by Allergan, and that Ipsen and/or its future marketing partner have the opportunity to enter into employment contracts with certain key individuals who have experience relating to Reloxin®. The Commission appointed an Interim Monitor to oversee the transfer of confidential business information to Ipsen and to ensure compliance with all of the provisions of this order.

Participants

For the Commission: *Roberta S. Baruch, Brendan J. McNamara, Michael R. Moiseyev, Robert R. Pickett, James E. Southworth, and David A. Von Nirschl.*

For the Respondents: *M. Sean Royall, Gibson, Dunn & Crutcher L.L.P.; and W. Stephen Smith and John Gowdy, Morrison & Foerster LLP.*