PRACTICE, P.C., SHAWNEE FAMILY CARE, P.A., STATLAND CLINIC, LTD., SUNFLOWER MEDICAL GROUP, P.A., UNITED MEDICAL GROUP, L.L.C., AND KIMBERLY M. WIRTHS, M.D., P.A.

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

Docket C-4169; File No. 051 0137
Complaint, September 29, 2006 – Decision, September 29,2006

This consent order addresses allegations that New Century Health Quality Alliance, Inc., and Prime Care of Northeast Kansas, as well as certain officials

and members of New Century or Prime Care, entered into, orchestrated, and implemented agreements to fix prices and other contract terms on which their physician practice members would deal with health plans. The order prohibits the 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, not to deal, or threaten not to deal with payors; (3) regarding 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 New Century or Prime Care. The order also prohibits the respondents from facilitating exchanges of information between or among physicians concerning whether, or on what terms, to contract with a payor. For three years, New Century and Prime Care are required to notify the Commission before entering into any arrangement to act as an agent on behalf of any physicians with payors regarding contracts or before participating in contracting with health plans on behalf of a qualified risk-sharing joint arrangement, or a qualified clinically-integrated joint arrangement. Also, for three years, named New Century and Prime Care officials may not (1) negotiate or act as an agent on behalf of any physician or medical group practice that participates or has participated in either New Century or Prime Care or (2) advise any physician or medical group practice that participates in or has participated in either New Century or Prime Care on contracts, offers, contract terms, conditions, or requirements for dealing with any payors. In addition, for three years, both New Century and Prime Care are required to distribute the complaint and order (1) to all physicians who have participated, currently participate, or express interest in participating in New Century or Prime Care; and (2) to payors that have negotiated contracts with or that contract in the future with New Century or Prime Care.

Participants

For the *Commission*: *Ellen Connelly, David M. Narrow,* and *Anne R. Schenof.*

For the *Respondent*: *George E. Leonard, Shugart, Thomson & Kilroy, PC.*

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 New Century Health Quality Alliance, Inc. ("New Century"), Prime Care of Northeast Kansas, L.L.C. ("Prime Care"), Elizabeth Gallup, M.D., J.D., Steven Buie, M.D., Thomas Allen, M.D., and G. Robert Powers, M.D., Associates in Family Medicine, P.A., Briarcliff Medical Associates, P.C., College Park Family Care Center, P.A., Family Health Group, Chartered, Family Medical Group, P.A., Hickman Mills Clinic, Inc., Kanza Multispecialty Group, P.A., Landmark Medical Center, Inc., Michael E. Monaco, M.D., d/b/a Select Healthcare, P.A., Kenneth Norton, M.D., P.A., Overland Park Family Health Partners, P.A., Quivera Internal Medicine, L.L.C., Seaport Family Practice, P.C., Shawnee Family Care, P.A., Statland Clinic Ltd., Sunflower Medical Group, P.A., United Medical Group, L.L.C., and Kimberly M. Wirths, M.D., P.A., hereinafter sometimes collectively referred to as "Respondents," have violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges in that respect as follows:

NATURE OF THE CASE

1. This matter concerns an agreement among competing physicians to refuse to deal, except on collectively determined terms, including price terms, with Humana Health Plan, Inc. ("Humana"), and with others offering coverage for health care services ("payors") in the Kansas City area, which includes areas in both Missouri and Kansas. The physicians orchestrated this behavior with and through their respective independent practice associations ("IPAs"), New Century and Prime Care, and through activities undertaken jointly by New Century and Prime Care.

RESPONDENTS

2. New Century, a not-for-profit corporation established in 1998, is organized, existing, and doing business as an IPA under and by virtue of the laws of the State of Kansas, with its principal

address at 5799 Broadmoor, Suite 104, Mission, Kansas 66202. New Century consists of 16 medical practices with a total of approximately 87 primary care physicians who treat patients in the Kansas City area.

3. Prime Care, a for-profit limited liability company established in 1996, is organized, existing, and doing business as an IPA under and by virtue of the laws of the State of Kansas, with its principal address at 5799 Broadmoor, Suite 104, Mission, Kansas 66202. Prime Care consists of nine medical practices with a total of approximately 40 primary care physicians who treat patients in the Kansas City area.

4. In 2002, New Century and Prime Care combined their Board meetings, offices, and administrative staff and operations. New Century and Prime Care voted to formally merge into a single entity, effective January 1, 2005. However, New Century and Prime Care did not complete a merger or formal restructuring that consolidated the two, legally distinct, organizations.

5. New Century and Prime Care took actions in furtherance of the agreements and actions hereinafter alleged to be unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, through the following officials (hereinafter referred to as "Respondent Officials"), among others:

a. Elizabeth Gallup, M.D., J.D., is New Century's President. In that capacity, she directly participated in the conduct regarding Humana and other payors that is described and challenged as unlawful in this Complaint. Her principal address is 236 Arapahoe Circle, East, Lake Quivera, Kansas 66217.

b. Steven Buie, M.D., who was New Century's Chairman of the Board from 1999 through 2004. During that time, and in that capacity, he directly participated in the conduct regarding Humana and other payors that is described and

challenged as unlawful in this Complaint. His principal address is 11201 Colorado Avenue, Kansas City, Missouri 64137.

c. Thomas Allen, M.D., who is, and has been, New Century's Chairman of the Board since January 1, 2005. During that time, and in that capacity, he directly participated in the conduct regarding Humana and other payors that is described and challenged as unlawful in this Complaint. His principal address is 4601 West 109th Street, #212, Overland Park, Kansas 66211.

d. G. Robert Powers, M.D., who is, and has been, Prime Care's Chairman of the Board. In that capacity, he directly participated in the conduct regarding Humana that is described and challenged as unlawful in this Complaint. His principal address is 2040 Hutton, #102, Kansas City, Kansas 66109.

6. Each of the following is a for-profit medical practice that is in the business of providing professional medical services, including physician services, to patients for a fee (hereinafter referred to as "Physician Practice Respondents"):

a. Associates in Family Medicine, P.A., whose principal address is 8940 State Avenue, Kansas City, Kansas 66112;

b. Briarcliff Medical Associates, P.C., whose principal address is 5400 North Oak Trfwy., Suite 200, Kansas City, Missouri 64118;

c. College Park Family Care Center, P.A., whose principal address is 11755 West 112th Street, Overland Park, Kansas 66210;

d. Family Health Group, Chartered, whose principal address is 12330 Metcalf, Suite 500, Overland Park, Kansas 66213;

e. Family Medical Group, P.A., whose principal address is 8101 Parallel Parkway, Suite 100, Kansas City, Kansas 66112;

f. Hickman Mills Clinic, Inc., whose principal address is 11201 Colorado Avenue, Kansas City, Missouri 64137;

g. Kanza Multispecialty Group, P.A., whose principal address is 1428 South 32nd, Kansas City, Kansas 66106;

h. Landmark Medical Center, Inc., whose principal address is 8800 N.W. 112th Street, Kansas City, Missouri 64153;

i. Michael E. Monaco, M.D., d/b/a Select Healthcare, P.A., whose principal address is 5701 West 119th Street, Suite 345, Overland Park, Kansas 66209;

j. Kenneth Norton, M.D., P.A., whose principal address is 8901 W. 74th Street, Suite 333, Shawnee Mission, Kansas 66204;

k. Overland Park Family Health Partners, P.A., whose principal address is 6740 West 121st Street, Overland Park, Kansas 66209;

l. Quivera Internal Medicine, L.L.C., whose principal address is 10601 Quivera Road, Suite 210, Overland Park, Kansas 66215**;**

m. Seaport Family Practice, P.C., whose principal address is 140 Westwoods Drive, Liberty, Missouri 64068;

n. Shawnee Family Care, P.A., whose principal address is 5949 Nieman, Shawnee, Kansas 66203;

o. Statland Clinic, Ltd., whose principal address is 5701 West 119th Street, Suite 240, Overland Park, Kansas 66209;

p. Sunflower Medical Group, P.A., whose principal address is 5555 West 58th Street, Mission, Kansas 66202;

q. United Medical Group, L.L.C., whose principal address is 5701 State Avenue, Suite 100, Kansas City, Kansas 66102; and

r. Kimberly M. Wirths, M.D., P.A., whose principal address is 8675 College Boulevard, Suite 100, Overland Park, Kansas 66210.

THE FTC HAS JURISDICTION OVER RESPONDENTS

7. At all times relevant to this Complaint, New Century and Prime Care, acting separately or in concert, and acting through Respondent Officials, among others, have been engaged in the business of negotiating or attempting to negotiate contracts with payors for the provision of physician services on behalf, and for the pecuniary benefit, of their members, including the Physician Practice Respondents.

8. Except to the extent that competition has been restrained as alleged herein: (a) the Physician Practice Respondents that are members of New Century, are now, and have been, in competition with each other and with other members of New Century for the provision of physician services in the Kansas City area; (b) the Physician Practice Respondents that are members of Prime Care, are now, and have been, in competition with each other and with other members of Prime Care for the provision of physician services in the Kansas City area; and (c) the Physician Practice Respondents that are members of Respondent New Century and the Physician Practice Respondents that are members of Respondent Prime Care, are now, and have been, in competition with each other and with other members of New Century or Prime

Care for the provision of physician services in the Kansas City area.

9. All Respondents are "persons, partnerships, or corporations" within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

10. The general business practices of all Respondents, including the acts and practices alleged herein, 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

11. Individual physicians and physician group practices contract with payors of health care services and benefits, including insurance companies, Blue Cross and Blue Shield plans, health maintenance organizations (HMOs), preferred provider organizations (PPOs), self-insured employers, and others, to establish the terms and conditions, including price terms, under which the physicians will render their professional medical services to the payors' subscribers or covered employees and dependents. Physicians and physician group practices entering into such contracts often agree to accept lower compensation from payors in order to obtain access to additional patients made available by the payors' relationship with the covered individuals. These contracts may reduce payors' costs and enable them to lower the price of insurance or of providing health benefits, thereby resulting in lower medical costs for covered individuals.

12. Physicians and physician group practices sometimes form or participate in financially integrated joint ventures to provide physician services under agreements with payors willingly seeking such arrangements. Under such arrangements, the physicians and physician group practices may share financial risks and rewards based on their collective success in achieving pre-

established targets or goals regarding aggregate utilization and costs of the services provided to covered individuals.

13. Other than through their participation in integrated joint ventures, and absent anticompetitive agreements among them, otherwise competing physicians and physician group practices unilaterally decide whether to enter into contracts with payors to provide services to individuals covered by a payor's programs, and what prices they will accept as payment for their services pursuant to such contracts.

NEW CENTURY'S AND PRIME CARE'S OPERATION

14. Since their formation, New Century and Prime Care each have entered into contracts with payors for and on behalf of their respective member medical practices, under which New Century and Prime Care received capitation payments from the payors in exchange for the medical practices' agreement to provide their professional medical services to persons covered by the contracting payors. The capitation contracts provided to payors, in addition to the physicians' services, an insurance guarantee component that all covered physician services needed by persons covered under a payor's program would be provided by the contracting IPA's members for the predetermined capitation charge, regardless of the actual quantity or type of covered services needed and provided.

15. The member medical practices' participation in New Century and Prime Care, and their offering of their services through the IPAs' capitation contracts, was not, however, the physicians' exclusive or even primary method of selling their professional medical services. Rather, the medical practices also continued to sell their medical services individually, on a fee-for-service basis, outside of New Century and Prime Care, to individual patients and through contracts individually entered into between the medical practice and payors.

ANTICOMPETITIVE CONDUCT

16. At various times from 1999 to 2005, certain payors decided that they no longer wished to purchase both physician services and the insurance guarantee component jointly provided by the IPAs' member medical practices through New Century's and Prime Care's capitation contracts. Those payors sought to contract solely for the professional medical services of the individual members of New Century and Prime Care on a fee-for-service basis. During that time (and presently) New Century's and Prime Care's physician members offered and sold their professional medical services on a fee-for-service basis to payors and individual patients who did not deal with them through New Century or Prime Care.

17. New Century and Prime Care, each acted in conspiracy with their respective member medical practices, including the Physician Practice Respondents, both as combinations of their respective members and together as a combination of the two organizations' collective members. The purpose of the conspiracies was to prevent payors who previously had capitation contracts with one or both of the IPAs from terminating those contracts and dealing directly with the IPAs' individual medical practices to purchase or contract for their professional medical services. Through their joint agreements and actions, New Century and Prime Care, and New Century's and Prime Care's members, including the Physician Practice Respondents, and often acting through Respondent Officials, restrained competition by, among other things, having their members agree to refrain, and in fact refrain, from dealing individually or contracting with payors, other than on a capitation basis through New Century and Prime Care, and by engaging in collective negotiations over terms, including price terms, and conditions of dealing with payors regarding the individual member medical practices' professional medical services.

18. Respondents conducted their anticompetitive activities on two levels. First, the member medical practices of New Century and Prime Care, including the Physician Practice Respondents, agreed to refuse to deal, and refused to deal, with payors regarding payors' offers of fee-for-service contracts with each individual physician practice. Rather, the physicians agreed to deal, and only would deal, with the payors through New Century and Prime Care, and only on terms, including price terms, that were collectively agreed upon through New Century and Prime Care. Second, New Century and Prime Care joined together to increase the bargaining power of the two IPAs with payors, and to attempt to force Humana and other payors to accept the terms of dealing jointly agreed upon through New Century and Prime Care on behalf of their combined membership.

19. The Physician Practice Respondents acted affirmatively to further the anticompetitive actions undertaken on their behalf by New Century and Prime Care, by engaging in one or more of the following actions: (a) participating in the adoption or implementation of anticompetitive policies or actions by New Century or Prime Care through their representatives' participation in meetings and decisions of the New Century or Prime Care Boards; (b) participating in closing their medical practices to new Humana patients, as orchestrated by New Century and Prime Care, in order to coerce Humana into contracting through New Century and Prime Care on the physicians' collectively determined terms; (c) sending or distributing notices to their Humana patients, or otherwise informing them, of the patients' impending loss of their primary care physicians due to termination of the physicians' contracts with Humana, as orchestrated by New Century and Prime Care, in order to encourage patients to pressure Humana to contract with New Century and Prime Care on the physicians' collectively determined terms; and (d) refusing to deal individually with Humana, and informing Humana that they only would deal with Humana collectively through New Century or Prime Care.

EARLY CONTRACT NEGOTIATIONS WITH PAYORS

20. New Century and Prime Care began operations as two separate legal entities, and thereafter entered into separate risk-sharing contracts with payors, including Humana, Cigna, and Mid America Health Care Plans, Inc. ("Mid America").

21. Beginning as early as 2000, New Century physicians attempted to prevent MidAmerica from changing from a risk-sharing contract to a non-risk-sharing, fee-for-service, contract with New Century physicians, by refusing to deal with Mid America except through New Century, and by threatening to terminate Mid America if it did not agree to a risk-sharing contract with the physicians through New Century. These tactics succeeded, and Mid America agreed to the risk-sharing contract that the physicians, acting through New Century, demanded.

22. After succeeding in their efforts to prevent Mid America from obtaining a fee-for-service arrangement, the New Century physicians employed similar tactics in their 2001 negotiations with Cigna. Cigna also sought to change its contractual relationship with the physicians in New Century from a risk-sharing contract to a fee-for-service reimbursement plan. The New Century physicians were concerned that a fee-for-service reimbursement plan would result in their experiencing a significant drop in their payments from Cigna. To prevent Cigna from making this contractual change, the New Century physicians agreed to refuse, and did refuse, to contract with Cigna except through a group contract with New Century, and threatened to terminate the then-existing contract with Cigna if it continued its efforts to switch to fee-for-service reimbursement for the physicians' services. However, as of mid-2005, New Century did not have any contract with Cigna.

23. In 2002, New Century and Prime Care joined forces to bargain with payors. When New Century again found itself in a contract dispute with Mid America, Prime Care agreed to help

New Century by negotiating together with New Century. New Century and Prime Care united because they realized that acting together would give them more leverage in their negotiations with payors. Together, New Century and Prime Care represented approximately 125 primary care physicians in the Kansas City area

NEGOTIATIONS WITH HUMANA

24. Humana, a health maintenance organization (HMO), is a payor that does business in the Kansas City area, which includes Wyandotte County, Kansas, Johnson County, Kansas, and other counties and areas. Humana offers the only Medicare HMO program in Wyandotte County and has approximately 5,000 enrollees in its program there. Prime Care physicians represent approximately 95% of Humana's primary care physician network in Wyandotte County. Humana also offers one of the two Medicare HMO programs in Johnson County. New Century physicians represent approximately 50% of Humana's primary care physician network in Johnson County. New Century and Prime Care were aware that without at least a substantial portion of the Prime Care and New Century physicians in its networks, Humana would have an insufficient number of primary care physicians to be able to offer its Medicare HMO programs in either Wyandotte or Johnson counties. New Century and Prime Care used this information to attempt to coerce Humana into accepting their contract demands. New Century and Prime Care physicians also represented a substantial portion of Humana's primary care physician network for its commercial lines of business in the Kansas City area.

25. Humana had been providing coverage to enrollees in the Kansas City area under its various programs, including its Medicare HMO program, in part through separate full capitation risk contracts with New Century and Prime Care. In 2004, however, Humana decided to eliminate all risk contracting in the Kansas City area, and to contract with individual physicians and

physician group practices on a fee-for-service basis. Humana first informally notified New Century and Prime Care of its intention to eliminate its risk contracts with them. Subsequently, by letters dated September 1, 2004, and sent to New Century and Prime Care, Humana provided the formal notification, required by its contracts with each, to exercise its option to terminate each of those contracts without cause, effective December 31, 2004. However, those contracts required the New Century and Prime Care member medical practices to continue treating Humana patients for 180 days after a contract termination, or, based on the date notification was given, until June 30, 2005. The contract provided that the physicians would be paid on a fee-for-service basis for services rendered during this period.

26. The physicians in New Century and Prime Care wanted to continue contracting with Humana only through New Century and Prime Care, and on the terms of their previous capitation contracts with Humana. They did not want to contract directly with Humana on a fee-for-service basis, because they believed that Humana would offer lower payments than those the physicians previously had received under the capitation contracts.

27. On September 2, 2004, New Century and Prime Care sent a joint letter toHumana, signed by Drs. Buie and Powers in their capacities as chairmen of the two organizations. The letter informed Humana that New Century's and Prime Care's physicians would not negotiate with Humana on an individual basis, and would continue to contract with it only on a joint basis through New Century and Prime Care. In this letter, New Century and Prime Care also threatened that, unless Humana agreed to a contract by October 1, 2004, they would begin notifying patients covered by Humana, and the Medicare HMO program, who used New Century and Prime Care physicians that those physicians would withdraw from Humana's provider network. New Century and Prime Care sent copies of this letter to various executives at Humana, as well as to their member medical practices.

28. New Century and Prime Care previously had used similar tactics in their 2001-2002 contract negotiations with Humana. At that time, those tactics succeeded in preventing Humana from eliminating its risk contracts and implementing individual, non-risk contracts with physicians or medical practices. New Century and Prime Care used their prior success to encourage the physicians in their member medical practices to remain resolute, and to stick together through New Century and Prime Care, in their ongoing 2004 and 2005 dealings with Humana.

29. Almost immediately after sending Humana the September 2, 2004, letter, New Century and Prime Care embarked on a multifaceted public relations campaign, which included media advertisements geared toward employers and patients covered by Humana, flyers and letters to patients, meetings with employers, and communications with insurance brokers. This campaign was designed to pressure Humana to contract with New Century's and Prime Care's physicians through the IPAs, and on their desired terms. To prevent Humana from contracting individually with their member medical practices, including the Physician Practice Respondents, New Century and Prime Care together repeatedly urged their member medical practices not to meet individually with Humana representatives, and to refer all calls from Humana to the designated New Century and Prime Care representatives.

30. In early 2005, as part of the campaign to put pressure on Humana to accede to their contracting demands, New Century and Prime Care prepared draft letters for their member medical practices to send to their patients to warn them of an impending likely loss of their primary care physicians under their Humana coverage, and blaming Humana for the impending disruption in their care. New Century and Prime Care recommended that the letters be put on each medical practice's letterhead, and then have the practice either send copies to its Humana patients, or distribute it to patients at the practice's offices. At least seven of New Century's and Prime Care's approximately 25 member medical practices sent such letters to their Humana patients, and other

member medical practices may have distributed the letters to patients or posted the letters in their offices. The following Physician Practice Respondents sent letters based on the drafts prepared by New Century and Prime Care to at least some of their Humana patients:

College Park Family Care Center, P.A.;
Kanza Multispecialty Group, P.A.;
Landmark Medical Center, Inc.;
Seaport Family Practice, P.C.;
Statland Clinic Ltd.;
Sunflower Medical Group, P.A.; and
United Medical Group, L.L.C.

31. In early December of 2004, New Century and Prime Care presented Humana with a proposed letter of agreement for a new contract, which included, in addition to continued payment by capitation for Humana's Medicare HMO business, a 30% increase in the reimbursement to physicians under the commercial capitation part of the contract. By letter of December 10, 2004, Humana rejected this proposal, and reiterated its desire only to contract individually and directly with the physicians and medical practices in New Century and Prime Care.

32. New Century and Prime Care were aware of Humana's need to have their physicians in its provider network in order for Humana to be able to offer its products for sale in the Kansas City area, and were aware of the disruption that would occur to patients covered under Humana programs if the New Century and Prime Care physicians did not contract with Humana. New Century and Prime Care expressed such awareness both to their members in Board meetings and memoranda, and to Humana in letters.

33. On February 18, 2005, the Boards of Directors of New Century and Prime Carejointly decided to encourage their member medical practices to contact Humana and inform it that

they were closing their practices to new Humana patients. This was done, at least in part, to eliminate Humana's ability to market its products, thereby putting pressure on Humana to contract with New Century and Prime Care on the physicians' collectively determined desired terms. In February and March, 2005, New Century and Prime Care sent draft letters to all their member medical practices for use in notifying Humana that they were closing their practices to new Humana patients. New Century and Prime Care encouraged the physician practices to send the letters to Humana. The following Physician Practice Respondents, accounting for more than 100 of New Century's and Prime Care's approximately 125 total physicians, sent such letters to Humana closing their practices to new Humana patients:

Associates in Family Medicine, P.A.;
Briarcliff Medical Associates, P.C.;
College Park Family Care Center, P.A.;
Family Health Group, Chartered;
Hickman Mills Clinic, Inc.;
Kanza Multispecialty Group, P.A.;
Landmark Medical Center, Inc.;
Michael E. Monaco, M.D., d/b/a Select Healthcare, P.A.;
Overland Park Family Health Partners, P.A.;
Quivera Internal Medicine, L.L.C.;
Seaport Family Practice, P.C.;
Statland Clinic Ltd.;
Sunflower Medical Group, P.A.;
United Medical Group, L.L.C.; and
Kimberly M. Wirths, M.D., P.A.

34. Throughout late 2004 and early 2005, Humana repeatedly attempted to contractdirectly with the individual New Century and Prime Care member medical practices. These efforts were unsuccessful. New Century and Prime Care Board meeting minutes reported on Humana's failure to obtain such individual contracts or arrange for physician alternatives, and noted Humana's increasing frustration at the situation. New Century

and Prime Care attributed Humana's lack of success in obtaining individual contracts to "the leverage the physicians have as a unified group." The following Physician Practice Respondents, when contacted by Humana, refused to deal individually with Humana, and referred the Humana representatives to New Century and Prime Care for contract discussions:

Briarcliff Medical Associates, P.C.;
Family Health Group, Chartered;
Family Medical Group, P.A.;
Landmark Medical Center, Inc.;
Michael E. Monaco, M.D., d/b/a Select Healthcare, P.A.;
Kenneth Norton, M.D., P.A.;
Overland Park Family Health Partners, P.A.;
Quivera Internal Medicine, L.L.C.;
Seaport Family Practice, P.C.; and
Sunflower Medical Group, P.A.

35. Humana was able to sign an individual contract with one New Century member medical practice consisting of three physicians. However, this group, Shawnee Family Care, P.A., immediately rescinded its agreement with Humana after discussions with New Century and Prime Care officials.

36. On April 1, 2005, New Century and Prime Care together filed a lawsuit against Humana in Kansas state court for breach of contract regarding Humana's termination of its capitation contracts with New Century and Prime Care, and seeking a preliminary injunction against that termination. Humana removed the case to federal district court for the Western District of Missouri and, on May 7, 2005, filed a counterclaim alleging federal and state antitrust law violations by New Century and Prime Care, acting as representatives of their member medical practices. After Humana had filed its antitrust counterclaim, and the Federal Trade Commission commenced an investigation of the actions of New Century and Prime Care, New Century's and Prime Care's member medical practices began to cease their

concerted refusal to deal with Humana, and began to deal individually with Humana regarding its contract offers to them.

RESPONDENTS' CONDUCT IS NOT LEGALLY JUSTIFIED

37. Respondents' joint refusal to deal and negotiation of fees and other competitivelysignificant terms, and the agreements, acts, and practices described above, have not been, and are not, reasonably related to any efficiency-enhancing integration among the physician members of New Century and Prime Care, or between New Century and Prime Care and their respective members, including the Physician Practice Respondents.

RESPONDENTS' ACTIONS HAVE HAD, OR COULD BE EXPECTED TO HAVE, SUBSTANTIAL ANTICOMPETITIVE EFFECTS

38. Respondents' actions described in paragraphs 15 to 35 of this Complaint have had, have tended to have, or if successful would have had, the effect of restraining trade unreasonably and hindering competition in the provision of physician services in the Kansas City area in the following ways, among others:

a. unreasonably restraining price and other forms of competition among physicians whose medical practices are members of New Century, among physicians whose medical practices are members of Prime Care, and between New Century and Prime Care, and their respective medical practice members;

b. increasing prices for physician services;

c. depriving payors, including insurers and employers, and individual consumers, of the benefits of competition among physicians; and

d. depriving consumers of the benefits of competition among payors.

39. 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.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-ninth day of September, 2006, issues its Complaint against Respondents New Century Health Quality Alliance, Inc., Prime Care of Northeast Kansas, L.L.C., Elizabeth Gallup, M.D., J.D., Steven Buie, M.D., Thomas Allen, M.D., G. Robert Powers, M.D., Associates in Family Medicine, P.A., Briarcliff Medical Associates, P.C., College Park Family Care Center, P.A., Family Health Group, Chartered, Family Medical Group, P.A., Hickman Mills Clinic, Inc., Kanza Multispecialty Group, P.A., Landmark Medical Center, Inc., Michael E. Monaco, M.D., d/b/a Select Healthcare, P.A., Kenneth Norton, M.D., P.A., Overland Park Family Health Partners, P.A., Quivera Internal Medicine, L.L.C., Seaport Family Practice, P.C., Shawnee Family Care, P.A., Statland Clinic Ltd., Sunflower Medical Group, P.A., United Medical Group, L.L.C., and Kimberly M. Wirths, M.D., P.A.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of New Century Health Quality Alliance, Inc. ("New Century"), Prime Care of Northeast Kansas, L.L.C. ("Prime Care"), Elizabeth Gallup, M.D., J.D., Steven Buie, M.D., Thomas Allen, M.D., G. Robert Powers, M.D., Associates in Family Medicine, P.A., Briarcliff Medical Associates, P.C., College Park Family Care Center, P.A., Family Health Group, Chartered, Family Medical Group, P.A., Hickman Mills Clinic, Inc., Kanza Multispecialty Group, P.A., Landmark Medical Center, Inc., Michael E. Monaco, M.D., d/b/a Select Healthcare, P.A., Kenneth Norton, M.D., P.A., Overland Park Family Health Partners, P.A., Quivera Internal Medicine, L.L.C., Seaport Family Practice, P.C., Shawnee Family Care, P.A., Statland Clinic Ltd., Sunflower Medical Group, P.A., United Medical Group, L.L.C., and Kimberly M. Wirths, M.D., P.A. (hereinafter collectively 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 attorney, 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 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 New Century is a not-for-profit corporation, organized, existing, and doing business as an independent practice association ("IPA") under and by virtue of the laws of the State of Kansas, and its principal address is 5799 Broadmoor, Suite 104, Mission, Kansas 66202.

2. Respondent Prime Care is a for-profit limited liability company, organized, existing, and doing business as an IPA under and by virtue of the laws of the State of Kansas, and its principal address is 5799 Broadmoor, Suite 104, Mission, Kansas 66202.

3. Respondent Elizabeth Gallup, M.D., J.D., an individual, is New Century's President. Her principal address is 236 Arapahoe Circle, East, Lake Quivera, Kansas 66217.

4. Respondent Steven Buie, M.D., an individual, was New Century's Chairman of the Board from 1999 through 2004. His principal address is 11201 Colorado Avenue, Kansas City, Missouri 64137.

5. Respondent Thomas Allen, M.D., an individual, is New Century's current Chairman of the Board. His principal address is 4601 W. 109th Street, #212, Overland Park, Kansas 66211.

6. Respondent G. Robert Powers, M.D., an individual, is Prime Care's Chairman of the Board. His principal address is 2040 Hutton, #102, Kansas City, Kansas 66109.

7. Respondent Associates in Family Medicine, P.A., is a Medical Group Practice that participates in Respondent Prime Care. Its principal address is 8940 State Avenue, Kansas City, Kansas 66112.

8. Respondent Briarcliff Medical Associates, P.C., is a Medical Group Practice that participates in Respondent New Century. Its principal address is 5400 North Oak Trfwy., Suite 200, Kansas City, Missouri 64118.

9. Respondent College Park Family Care Center, P.A., is a Medical Group Practice that participates in Respondent New Century. Its principal address is 11755 West 112th Street, Overland Park, Kansas 66210.

10. Respondent Family Health Group, Chartered, is a Medical Group Practice that participates in Respondent New Century. Its principal address is 12330 Metcalf, Suite 500, Overland Park, Kansas 66213.

11. Respondent Family Medical Group, P.A., is a Medical Group Practice that participates in Respondent Prime Care. Its principal address is 8101 Parallel Parkway, Suite 100, Kansas City, Kansas 66112.

12. Respondent Hickman Mills Clinic, Inc., is a Medical Group Practice that participates in Respondent New Century. Its principal address is 11201 Colorado Avenue, Kansas City, Missouri 64137.

13. Respondent Kanza Multispecialty Group, P.A., is a Medical Group Practice that participates in Respondent Prime Care.

Its principal address is 1428 South 32nd, Kansas City, Kansas 66106.

14. Respondent Landmark Medical Center, Inc., is a Medical Group Practice that participates in Respondent New Century. Its principal address is 8800 N.W. 112th Street, Kansas City, Missouri 64153.

15. Respondent Michael E Monaco, M.D., d/b/a Select Healthcare, P.A., is a Medical Group Practice that participates in Respondent New Century. Its principal address is 5701 West 119th Street, Suite 345, Overland Park, Kansas 66209.

16. Respondent Kenneth Norton, M.D., P.A. is a Medical Group Practice that participates in Respondent New Century. Its principal address is 8901 West 74th Street, Suite 333, Shawnee Mission, Kansas 66204.

17. Respondent Overland Park Family Health Partners, P.A., is a Medical Group Practice that participates in Respondent New Century. Its principal address is 6740 West 121st Street, Overland Park, Kansas 66209.

18. Respondent Quivera Internal Medicine, L.L.C., is a Medical Group Practice that participates in Respondent New Century. Its principal address is 10601 Quivera Road, Suite 210, Overland Park, Kansas 66215.

19. Respondent Seaport Family Practice, P.C., is a Medical Group Practice that participates in Respondent New Century. Its principal address is 140 Westwoods Drive, Liberty, Missouri 64068.

20. Respondent Shawnee Family Care, P.A., is a Medical Group Practice that participates in Respondent New Century. Its principal address is 5949 Nieman, Shawnee, Kansas 66203.

21. Respondent Statland Clinic, Ltd., is a Medical Group Practice that participates in Respondent Prime Care. Its principal address is 5701 West 119th Street, Suite 240, Overland Park, Kansas 66209.

22. Respondent Sunflower Medical Group, P.A., is a Medical Group Practice that participates in Respondent New Century. Its principal address is 5555 West 58th Street, Mission, Kansas 66202.

23. Respondent United Medical Group, L.L.C., is a Medical Group Practice that participates in Respondent Prime Care. Its principal address is 5701 State Avenue, Suite 100, Kansas City, Kansas 66102.

24. Respondent Kimberly M. Wirths, M.D., P.A., is a Medical Group practice that participates in Respondent New Century. Its principal address is 8675 College Boulevard, Suite 100, Overland Park, Kansas 66210.

25. 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:

A. "Respondent New Century" means New Century Health Quality Alliance, 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.

B. "Respondent Prime Care" means Prime Care of Northeast Kansas, 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 IPAs" means Respondent New Century and Respondent Prime Care, each of which is a "Respondent IPA".

D. "Respondent Gallup" means Elizabeth Gallup, M.D., J.D.

E. "Respondent Buie" means Steven Buie, M.D.

F. "Respondent Allen" means Thomas Allen, M.D.

G. "Respondent Powers" means G. Robert Powers, M.D.

H. "Respondent Officials" means Respondent Gallup, Respondent Buie, Respondent Allen, and Respondent Powers.

I. "Physician Practice Respondents" means Respondent Associates in Family Medicine, P.A., Respondent Briarcliff Medical Associates, P.C., Respondent College Park Family Care Center, P.A., Respondent Family Health Group Chartered, Respondent Family Medical Group, P.A., Respondent Hickman Mills Clinic, Inc., Respondent Kanza Multispecialty Group, P.A., Respondent Landmark Medical Center, Inc., Respondent Michael E. Monaco, M.D., d/b/a Select Healthcare, P.A., Respondent Kenneth Norton, M.D., P.A., Respondent Overland Park Family

Health Partners, P.A., Respondent Quivera Internal Medicine, L.L.C., Respondent Seaport Family Practice, P.C., Respondent Shawnee Family Care, P.A., Respondent Statland Clinic Ltd., Respondent Sunflower Medical Group, P.A., Respondent United Medical Group, L.L.C., and Respondent Kimberly M. Wirths, M.D., P.A.

J. "Respondents" means Respondent IPAs, Respondent Officials, and Physician Practice Respondents.

K. "Medical group practice" means a bona fide, integrated firm in which physicians practice medicine together as partners, shareholders, owners, members, or employees, or in which only one physician practices medicine.

L. "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."

M. "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, as well as any person that develops, leases, or sells access to networks of physicians.

N. "Person" means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.

O. "Physician" means a doctor of allopathic medicine ("M.D.") or a doctor of osteopathic medicine ("D.O.").

P. "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.

Q. "Qualified clinically-integrated joint arrangement" means an arrangement to provide physician services in which:

1. all physicians who 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 who 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 that result from such integration through the arrangement.

R. "Qualified risk-sharing joint arrangement" means an arrangement to provide physician services in which:

1. all physicians who participate in the arrangement share substantial financial risk through their participation in the arrangement and thereby create incentives for the physicians who 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 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 who 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, when 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 that result from such integration through the arrangement.

II.

IT IS FURTHER ORDERED that Respondents, 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 with respect to their provision of physician services:

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 other than through Respondent New Century or Respondent Prime Care;

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 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 nothing in this Paragraph II shall prohibit any agreement or conduct involving any Respondent**:** (a) that subject to the requirements of Paragraph IV of this Order, 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 such

qualified joint arrangement does not restrict the ability of, or facilitate the refusal of, physicians who participate in it to deal with payors on an individual basis or through any other arrangement; or (b) where such agreement or conduct 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, for any arrangement under which a Respondent IPA would act as an agent, or as a messenger, on behalf of any physician or any medical group practice with any payor regarding contracts, the Respondent IPA proposing to enter into such arrangement shall notify the Secretary of the Commission in writing ("Paragraph III Notification") at least sixty (60) days prior to entering into the arrangement for which Paragraph III Notification is required. The Paragraph III Notification shall include the number of proposed physician participants in the proposed arrangement; the proposed geographic area in which the proposed arrangement would operate; a copy of any proposed physician participation agreement; a description of the proposed arrangement's purpose and function; a description of any resulting efficiencies expected to be obtained through the proposed arrangement; and a description of procedures to be implemented to limit possible anticompetitive effects of the proposed arrangement, such as those prohibited by this Order. If, within fifteen (15) days from the date of the Commission's receipt of the Paragraph III Notification, a representative of the Commission makes a written request for additional information to the Respondent IPA that provided the Paragraph III Notification then that Respondent IPA shall not enter into the arrangement described in the Paragraph III Notification prior to the expiration of sixty (60) days after substantially complying with such request.

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.

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 arrangement (referred to in this Paragraph IV as "Arrangement") in which any Respondent is a participant, that Respondent participant 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 concerning price or other terms or conditions of dealing with any payor, on behalf of any physician or medical group practice in such Arrangement.

Provided, further, however, Paragraph IV Notification shall include the following information regarding the Arrangement

pursuant to which Respondent intends to engage in the above identified conduct:

a. the total number of physicians and the number of physicians in each specialty participating in the Arrangement;

b. a description of the Arrangement, including its purpose and geographic area of operation;

c. a description of the nature and extent of the integration and the efficiencies resulting from the Arrangement;

d. an explanation of the relationship of any agreement on prices, or contract terms related to price, to furthering the integration and achieving the efficiencies of 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 any relevant market, including, but not limited to, the market share of physician services in any relevant market.

Provided, however, that any Physician Practice Respondent or any Respondent Official, who is participating in an Arrangement solely as participant in a Physician Practice Respondent, may, upon written affirmation, exclude from his, her, or its Paragraph IV Notification any information that is not known by such Physician Practice Respondent or such Respondent Official.

Provided, further 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 the Respondent that provided that Paragraph IV Notification, that Respondent 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 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. In addition, the absence of notice that the Arrangement has been rejected, regardless of a request for additional information, shall not be construed as a determination by the Commission, or its staff, that the Arrangement has been approved. Further, receipt by the Commission of any Paragraph IV Notification regarding activity pursuant to 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;

Provided, further, that Paragraph IV Notification shall not be required prior to engaging in any activity described at Paragraph IV.A or Paragraph IV.B of the Order pursuant to any Arrangement for which Paragraph IV Notification has previously been given.

V.

IT IS FURTHER ORDERED that, for three (3) years from the date this Order becomes final, Respondent Officials, 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. Negotiating, or acting as an agent or messenger, on behalf of any physician or any medical group practice that participates or has participated in either Respondent IPA with any payor, notwithstanding whether such conduct also is prohibited by Paragraph II of this Order; and

B. Advising any physician or medical group practice that participates, or has participated, in either Respondent New Century or Respondent Prime Care, to accept or reject any contract, offer, contract term, condition, or requirement of dealing with any payor, notwithstanding whether such conduct also is prohibited by Paragraph II of this Order.

Provided, however, that nothing in this Paragraph V shall prohibit a Respondent Official from: (a) subject to the requirements of Paragraph IV of this Order, forming, participating in, or taking any action in furtherance of a qualified risk-sharing joint arrangement or qualified clinically-integrated joint arrangement so long as such qualified joint arrangement 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 (b) any activity that solely involves physicians in a medical group practice in which the Respondent Official participates.

VI.

IT IS FURTHER ORDERED that each Respondent IPA shall:

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

1. send by first-class mail with delivery confirmation or electronic mail with return confirmation, a copy of this Order and the Complaint to:

a. every physician who participates, or has participated, in Respondent IPA at any time since January 1, 2000; and

b. each current officer, director, manager, and employee of Respondent IPA; and

2. send by first-class mail, return receipt requested, a copy of this Order and the Complaint to the chief executive officer of each payor that has contracted with Respondent IPA for the provision of physician services at any time since January 1, 2000;

B. For three (3) years from the date this Order becomes final:

1. Distribute by first-class mail, return receipt requested, a copy of this Order and the Complaint to:

a. each physician who begins participating in Respondent IPA, and who did not previously receive a copy of this Order and the Complaint from such Respondent IPA, within thirty (30) days of the time that such participation begins;

b. each payor who contracts with Respondent IPA for the provision of physician services, and who did not previously receive a copy of this Order and the Complaint from such Respondent IPA, within thirty (30) days of the time that such payor enters into such contract; and

c. each person who becomes an officer, director, manager, or employee of Respondent IPA, and who did not previously receive a copy of this Order and the Complaint from Respondent IPA, within

thirty (30) days of the time that he or she assumes such position with such Respondent IPA; and

2. Annually publish in an official annual report or newsletter sent to all physicians who participate in Respondent IPA, a copy of this Order and the Complaint with such prominence as is given to regularly featured articles.

C. Notify the Commission at least thirty (30) days prior to any proposed: (1) dissolution of Respondent IPA; (2) acquisition, merger or consolidation of Respondent IPA; or (3) other change in Respondent IPA 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 IPA; and

D. File verified written reports within sixty (60) days from 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 the Respondent IPA has complied and is complying with this Order;

2. the name, address, and telephone number of each payor with which the Respondent IPA has had any contact; and

3. copies of the delivery confirmations or electronic mail with return confirmations required by Paragraph VI.A.1, and copies of the signed return receipts required by Paragraphs VI.A.2 and VI.B.1.

VII.

IT IS FURTHER ORDERED that each Respondent Official shall file a verified written report within ninety (90) days from 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 a detailed description of the manner and form in which the Respondent Official filing the report has complied and is complying with this Order.

VIII.

IT IS FURTHER ORDERED that each Physician Practice Respondent shall:

A. Within thirty (30) days from the date that this Order becomes final send by first-class mail, return receipt requested, to each physician who participates in such Physician Practice Respondent a copy of the notice specified in Appendix A to this Order;

B. File a verified written report within ninety (90) days from 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 the Physician Practice Respondent has complied and is complying with this Order; and

   2. copies of the signed return receipts required by Paragraph VIII.A of this Order; and

C. Notify the Commission at least thirty (30) days prior to any proposed change in the Physician Practice Respondent

that may affect compliance obligations arising out of this Order.

IX.

IT IS FURTHER ORDERED that, for three (3) years from the date this Order becomes final, each Respondent shall notify the Commission of any change in his, her, or its respective principal address within twenty (20) days of such change in address.

X.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order:

A. Each Respondent shall permit any duly authorized representative of the Commission access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, calendars, and other records and documents in the possession, or under the control, of such Respondent relating to any matter contained in this Order; and

B. Upon five (5) days' notice:

1. Each Respondent IPA and each Physician Practice Respondent, in the presence of counsel and without restraint or interference, permit any duly authorized representative of the Commission to interview its officers, directors, employees, agents or representatives, or any participant in any Physician Practice Respondent; and

2. Each Respondent Official shall, in the presence of counsel and without restraint or interference, permit

any duly authorized representative of the Commission to interview him or her.

XI.

IT IS FURTHER ORDERED that this Order shall terminate on September 29, 2026.

By the Commission.

Appendix A

[Letterhead of Physician Practice Respondent]

[Date]

[Name and Address of Participating Physician]

Dear [Participating Physician]:

On [Date], the Federal Trade Commission ("FTC") issued a complaint and decision and order ("Order") against New Century Health Quality Alliance, Inc. ("New Century"), Prime Care of Northeast Kansas, L.L.C. ("Prime Care"), and various officials and physician practice members of those organizations, including [Physician Practice Respondent]. Pursuant to Paragraph VIII.A. of the Order [Physician Practice Respondent] must provide you with notice of this Order, and this letter is intended to provide that notice.

The Order is designed to correct illegal conduct described by the FTC in the complaint, which alleges, in part, that New Century,

Prime Care, certain New Century and Prime Care officials, and certain New Century and Prime Care members violated federal antitrust laws by agreeing to fix prices and other terms on which they would contract with health plans and by refusing to contract with health plans except on collectively determined terms. In short, the Order prohibits New Century, Prime Care, the New Century and Prime Care officials named in the Order, and the New Century and Prime Care physician practice members named in the Order, including [Physician Practice Member], from entering into or facilitating any agreement between or among physicians (1) to negotiate with health plans on any physicians' behalf, (2) to deal, not to deal, or threaten not to deal with health plans on any physicians' behalf, (3) regarding on what terms to deal with any health plan, or (4) to not deal individually with any health plan.

Certain legitimate joint-contracting arrangements among competing physicians are exempted from the general prohibition. These arrangements would include, for example, qualified risk-sharing joint arrangements and qualified clinically-integrated joint arrangements, as defined in the Order. The FTC must still be given prior notification of these arrangements, however.

The Order expires in twenty years. A copy is enclosed for your review.

Sincerely,

[Signatory]

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order with New Century Health Quality Alliance, Inc. ("New Century"), Prime Care of Northeast Kansas ("Prime Care"), four current or former officials of New Century or Prime Care, and 18 physician practices that are members of New Century or Prime Care (collectively referred to as "Proposed Respondents").

New Century and Prime Care each are a type of physician joint venture known as an independent practice association (IPA). The New Century and Prime Care IPAs were comprised of competing physician practices in the Kansas City area who came together to jointly offer their services to certain payors who sought to purchase the physicians' services under capitation payment arrangements. Through the IPAs, the physicians shared financial risk that the services provided under the contracts might exceed the capitation payment from the payor to the IPA. In addition to together offering capitation risk-sharing contracts through the IPAs, each individual physician practice also continued to offer and sell its medical services to individual patients and payors on a fee-for-service basis as the physician practice's primary method of doing business.

At various times, certain payors attempted to purchase the services of the individual physician practices in New Century and Prime Care not as part of the IPAs' risk-sharing capitation contracts as the payors had done in the past, but rather directly and on an individual fee-for-service basis. Although the physician practices continued to offer their services in competition with one another individually and on a fee-for-service basis in the market to other payors, the physician practices, acting through New Century and Prime Care and their officials, agreed that they would only sell their services to those payors through capitation contracts entered into between the payors and the IPAs.

The physician practices did this because they believed that they would receive lower payments under the direct, fee-for-service arrangements than they were making under the capitation contracts with the payors.

The four named officials led New Century's and Prime Care's efforts to force the payors to deal through the IPAs in order to obtain access to the services of those physician practices, and actively encouraged the physician practice members of New Century and Prime Care to refuse to deal individually with health plans outside the IPAs. Each of the 18 named physician practices took one or more affirmative actions in furtherance of the illegal agreement alleged in the proposed Complaint. In the absence of market power, jointly offering medical services on a capitation risk-sharing basis through New Century and Prime Care may be lawful and even procompetitive. However, the agreement by the physician members of New Century and Prime Care, respectively, to provide capitation risk contracts through each IPA does not justify their agreements not to deal, or only to deal on collectively determined terms, including price terms, regarding the sale of the individual physician practices' services outside the joint ventures. The member physicians' practices have not been fully integrated through either of the IPAs, and the individual physician practices in each IPA continue to compete with each other outside the IPAs in the sale of their services on a fee-for-service basis. Moreover, the offering by each IPA of capitation risk contracts does not justify the agreement of the two IPAs, at various times, to coordinate their actions, and the actions of their physician members, regarding the separate capitation risk contracts that each IPA had with payors. Neither the two IPAs, nor their respective physician memberships, were integrated at all with each other regarding those separate capitation risk contracts. Likewise, the IPAs' offering of capitation risk contracts, either separately or together, does not justify the two IPAs' agreement to act together, and their joint actions, regarding the sale of their individual member physician practices' medical services on a fee-for-service basis outside of the IPAs.

The agreement settles charges that the Proposed Respondents violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, by entering into, orchestrating, and implementing agreements to fix prices and other contract terms on which the physician practice members of the IPAs would deal with health plans. Even though the physician practice members offered their services jointly regarding their capitation risk contracts through the IPAs, they remained competitors in the sale of physician services and their refusals to deal with health plans except collectively and on collectively-determined terms through the IPAs violated Section 5.

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 Proposed Respondents that they 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.

New Century is an independent practice association ("IPA") that consists of 16 medical practice groups with a total of approximately 87 primary care physicians who treat patients in the Kansas City area. Prime Care also is an IPA, and consists of nine medical practice groups with a total of about 40 primary care

physicians who treat patients in the Kansas City area. In 2002, the two IPAs began combining their Board meetings, offices, and administrative staff and operations. They voted to merge into a single entity, effective January 1, 2005, but never completed the steps legally necessary to consolidate.

At various times, the physician practice members of New Century and Prime Care, acting jointly through those IPAs and their officials, and with the two IPAs acting either in concert or separately on different occasions, refused to deal with various health plans on any terms except by contracting through the IPAs and on a capitated basis.

Most recently, in 2004 and 2005, the physician practice members of New Century and Prime Care, acting together through the two IPAs and their officials, agreed to refuse to contract, and did refuse to contract, with Humana Health Plan, Inc. ("Humana") regarding its offers of fee-for-service payment contracts with the individual physician practices. Humana notified New Century and Prime Care of its intention to eliminate its use of capitated arrangements in the Kansas City area, and also notified them of its intention to terminate the separate, pre-existing, capitated contracts it had with each IPA. Before the capitated contract terminations were to become effective, Humana attempted to enter into new, individual, fee-for-service contracts with each of the physician practices that were members of New Century or Prime Care. However, New Century's and Prime Care's physician members agreed that they would deal with Humana only through their IPAs, acting in concert, and only on terms, including price terms, that were collectively agreed upon by the IPAs' physician practice members. These demands included, among other things, continued joint contracting, payment by capitation, and a 30% increase in physician reimbursement under one health plan contract.

New Century and Prime Care, and their physician practice members, realized that together, with approximately 125 primary

care physicians concentrated in certain parts of the Kansas City Area, they would have a better chance of forcing health plans, including Humana, to accept their contract demands. For example, they and their member physician practices were aware that Humana would be unable to offer certain of its programs to customers in the Kansas City area without the New Century and Prime Care physicians under contract as participating providers, and used that information to attempt to coerce Humana to accede to their contract demands.

When Humana objected to New Century and Prime Care's demands, and refused to contract on a capitated basis or otherwise to deal with New Century or Prime Care in attempting to contract with the physician practices, New Century and Prime Care embarked on a multi-faceted campaign to encourage employers, brokers, and patients to put pressure on Humana to accept the contract terms demanded by the IPAs. Among the actions taken in furtherance of the challenged agreement were that various physician practice members of New Century and Prime Care, with the active encouragement and assistance of New Century and Prime Care officials: notified Humana that they were closing their medical practices to new patients covered by Humana's programs; mailed or distributed notices to patients covered by Humana programs informing the patients of impending disruption in their physician care due to Humana's refusal to enter into a contract with the physicians on acceptable terms; and rebuffed efforts by Humana to contract with the individual physician practices, referring Humana back to New Century and Prime Care for all contracting issues. By the acts set forth in the Complaint, the Proposed Respondents 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 the Proposed 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, not to deal, or threaten not to deal with payors; (3) regarding 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 New Century or Prime Care.

Other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits the Proposed Respondents from facilitating exchanges of information between or among 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 the Proposed Respondents 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. The Proposed Respondents 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 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 New Century and Prime Care to notify the Commission before entering into any arrangement to act 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 the Proposed Respondents 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 New Century or Prime Care and health plans. Paragraph IV also sets out the information necessary to satisfy the notification requirement.

Paragraph V provides that, for three years, the New Century and Prime Care officials named in the proposed complaint and order may not: (1) negotiate or act as an agent on behalf of any

physician or medical group practice that participates or has participated in either New Century or Prime Care; or (2) advise any physician or medical group practice that participates in or has participated in either New Century or Prime Care on contracts, offers, contract terms, conditions, or requirements for dealing with any payors. Exempted from Paragraph V's prohibition are the officials' participation in: (1) certain qualified risk-sharing joint arrangements; (2) certain qualified clinically-integrated joint arrangements; and (3) activities that solely involve physicians in a medical group practice in which the official participates.

For three years, Paragraph VI requires both New Century and Prime Care, respectively, to distribute the complaint and order: (1) to all physicians who have participated in the IPAs, who currently participate in the IPAs, or who express interest in participating in the IPAs; and (2) to payors that have negotiated contracts with the IPAs, or that contract with the IPAs in the future.

Paragraphs VII, VIII, IX, and X of the proposed order impose various obligations on the Proposed Respondents to report or provide access to information to the Commission to facilitate the monitoring of compliance with the order. Paragraph XI provides that the proposed order will expire in 20 years.

Complaint

IN THE MATTER OF

DAN L. DUNCAN, EPCO, INC., TEXAS EASTERN PRODUCTS PIPELINE COMPANY, LLC, AND TEPPCO PARTNERS, L.P.

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-4173, File No. 051 0108
Complaint, October 31, 2006 – Decision, October 31, 2006

This consent order addresses the acquisition by Dan L. Duncan and EPCO, Inc., of TEPPCO's general partner, Texas Eastern Products Pipeline Company, LLC, and 2.5 million limited partnership units of TEPPCO Partners, L.P. Both EPCO and TEPPCO are leading providers of salt dome storage for natural gas liquids in Mont Belvieu, Texas. The order directs the respondents to sell TEPPCO's interests in Mont Belvieu Storage Partners and related pipeline, land, and other assets to a Commission-approved buyer, to remedy the lessening of competition resulting from the acquisition. If the respondents are unable to divest these assets to a Commission-approved buyer within the given time frame, the Commission may appoint a trustee to divest the assets. The order also requires the respondents to provide prior notice to the Commission of planned acquisitions, operatorships, or management of any natural gas liquid storage facility in Mont Belvieu, Texas, for a period of 10 years and to send copies of all new natural gas liquid storage leases with third-party storage facilities in Mont Belvieu within a specific time frame to ensure that subsequent acquisitions or leases do not adversely impact competition in the market and undermine the remedial goals of the order. Other provisions ensure that the acquirer receives all resources necessary to operate the divested assets. To maintain the competitive viability of the divested assets, the order contains several provisions relating to the operation of TEPPCO's TE Products Pipeline, an important outlet for natural gas liquids stored at the Mont Belvieu Storage Partners facility. The purpose of these provisions is to maintain the competitive viability of the Mont Belvieu Storage Partners facility by ensuring that the respondents cannot disadvantage shippers who originate product movements from that facility in favor of shippers who use respondents' own storage facility.