

Complaint

IN THE MATTER OF

ADVOCATE HEALTH PARTNERS, ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS
OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-4184; File No. 031 0021**Complaint, February 7, 2007 — Decision, February 7, 2007*

This consent order addresses horizontal agreements to fix prices, engage in collective bargaining, and refuse to deal individually with health plans by competing independent physicians and physician practice groups in the Chicago metropolitan area. Respondents Advocate Health Partners and its members, eight physician-hospital organizations, orchestrated and implemented these agreements; respondents Advocate Health Centers, Inc., and Dreyer Clinic, Inc., participated in the agreements. Respondents' actions restrained price and other forms of competition among physicians; increased prices for physician services; and deprived health plans, employers, and individual consumers of the benefits of competition among physicians. The consent order prohibits respondents from entering into or facilitating any agreement among physicians with respect to their provision of physician services, exchanging information among physicians concerning any physician's terms or conditions of dealing with a payor, attempting to engage in any of these prohibited actions, or attempting to induce any person to engage in any of these actions. In addition, for three years from the date of this order, respondents shall 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. Also, for three years, respondents shall 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.

Participants

For the Commission: *John P. DeGeeter, Connie Salemi, Garth Huston, Jonathan Lutinski, and Daniel P. Ducore.*

For the Respondents: *Robert Leibenluft, Sharis Pozen, and Tracy Weir, Hogan & Hartson L.L.P. ; and John Marren and Thomas J. Babbo, Hogan & Marren, Ltd.*

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Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Advocate Health Partners (“Respondent AHP” or AAHP); Respondents Advocate Bethany Health Partners, Advocate Christ Hospital Health Partners, Advocate Good Samaritan Health Partners, Ltd., Advocate Good Shepherd Health Partners, Ltd., Advocate Illinois Masonic Health Partners, Advocate Lutheran General Health Partners, Inc., Advocate-South Suburban Health Partners, Advocate Trinity Health Partners (the “PHO Respondents”); and Advocate Health Centers, Inc. and Dreyer Clinic, Inc. (the “Advocate System Respondents”), hereinafter referred to collectively as “Respondents,” have violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges in that respect as follows:

NATURE OF THE CASE

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

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RESPONDENTS**A. Respondent AHP**

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

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

B. The PHO Respondents

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

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

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doing business under and by virtue of the laws of the State of Illinois, with its principal address at 1661 Feehanville, Suite 200, Mount Prospect, IL 60058. Approximately 560 physicians with medical-staff privileges at Advocate Christ Medical Center are members of Advocate Christ Hospital Health Partners.

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

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

C. The Advocate System Respondents

5. Respondent Advocate Health Centers, Inc. is a for-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal address at 2545 S. Dr. Martin Luther King Drive, Chicago, IL 60616. It is a for-profit subsidiary of a for-profit subsidiary of Advocate Health Care Network and employs approximately 165 physicians. Respondent Advocate Health Centers, Inc. participated in the

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illegal conduct alleged herein by utilizing Respondent AHP to negotiate contract terms for the services of its employed physicians jointly with the independent-physician members of the PHO Respondents, with whom Advocate Health Centers, Inc. otherwise competes.

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

JURISDICTION

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

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

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substantial part by the PHO Respondents' member physicians. AHP regularly and in the ordinary course of business refers to these physicians as Amembers" of AHP.

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

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

11. The general business practices of all Respondents, including the acts and practices herein alleged, are in or affect commerce as defined in the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

OVERVIEW OF PHYSICIAN CONTRACTING WITH PAYORS

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

13. Absent agreements among competing physicians on the prices and other terms on which they will provide services to payors' enrollees, competing physicians decide unilaterally whether to participate in payors' provider networks based on the terms and conditions, including price, offered by the payors.

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Competition among physicians generally results in lower prices to the individuals enrolled in health-insurance plans.

ANTICOMPETITIVE CONDUCT

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

A. Respondents' Contracting Process

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

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

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

18. After AHP reached an agreement on the price and other terms of the contract, the contract was transmitted to each PHO Respondent's Board of Directors, which had the authority to accept or reject the contract or to make a counteroffer. If a PHO Respondent's Board of Directors accepted a payor's contract, AHP would execute the contract. AHP or the PHO Respondent would then, for the first time, transmit the contract to the PHO Respondent's physician members, who could opt in or opt out of the contract. AHP did not transmit to individual physicians any rates proposed by the payors during negotiations, and transmitted only the rates that their PHO Board of Directors approved.

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

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

21. The Contract and Finance Committee's responsibilities included developing and approving physician contracting strategies and terms acceptable to the group as a whole — *i.e.*, collectively acceptable to the PHO Respondents, acting on behalf of their physician members; the Advocate System Respondents; and Advocate Health Care Network. In order to establish minimum acceptable reimbursement rates, the Contract and

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Finance Committee requested and received input from each PHO's Board of Directors as to its minimum acceptable rate for physician fees. Based on this input, the Contract and Finance Committee established a single benchmark for the entire group that was higher than the minimum rate that some PHO Boards of Directors were willing to accept. The Contract and Finance Committee was also responsible for authorizing AHP staff to finalize contracts that met those terms.

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

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

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

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

25. In early 2002, AHP began developing a strategy for negotiating a group contract with Blue Cross that would result in higher rates than the physicians would otherwise receive through

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their individual contracts. In publicizing this strategy to the physicians, AHP noted that Aa major part of [AHP's] value has been your access to the favorable rates negotiated by AHP for many of your fee-for-service contracts" and that AAdvocate fully expects to negotiate rate increases that will bring reimbursement levels for [Blue Cross] products closer to reasonable market rates."

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

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

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

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

30. Although the parties' agreement specified that Blue

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Cross's payments to AHP were to Aencourage outcome-based reimbursement" and to support efforts to implement electronic-claim-submission capabilities for all AHP physicians, AHP distributed the money only to physicians who signed the Agency Agreements.

**C. Negotiations with United Healthcare of Illinois, Inc.
("United")**

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

32. On June 5, 2001, AHP staff met with United and presented Aa proposal for physician services based upon the recommendation of the [Contract and Finance Committee]." United told AHP that the proposal was Asignificantly over market" and made no counteroffer. On June 15, 2001, AHP terminated United's physician and hospital contracts.

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

34. In August 2001, United agreed to a group contract with a physician fee increase. The fees were approximately 20 percent to

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30 percent higher than United's direct contracts with individual doctors in the Chicago area.

RESPONDENTS= CONDUCT IS NOT JUSTIFIED

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

RESPONDENTS= ACTIONS HAVE HAD SUBSTANTIAL ANTICOMPETITIVE EFFECTS

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

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

VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

37. The combination, conspiracy, acts, and practices described above constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. Such combination, conspiracy, acts, and practices, or the effects thereof, are continuing and will continue or recur in the absence of the relief herein requested.

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WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this seventh day of February, 2007, issues its Complaint against Respondents.

By the Commission.

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The Federal Trade Commission (“Commission”), having initiated an investigation of certain acts and practices of Advocate Health Partners (“AHP”), Advocate Bethany Health Partners, Advocate Christ Hospital Health Partners, Advocate Good Samaritan Health Partners, Ltd., Advocate Good Shepherd Health Partners, Ltd., Advocate Health Centers, Inc., Advocate Illinois Masonic Health Partners, Advocate Lutheran General Health Partners, Inc., Advocate-South Suburban Health Partners, Advocate Trinity Health Partners, and Dreyer Clinic, Inc., hereinafter referred to collectively 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

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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 AHP is a not-for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal address at 1661 Feehanville, Suite 200, Mount Prospect, IL 60058.
2. Respondent Advocate Bethany Health Partners is a not-for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal address at c/o Health Partners Operations - Advocate Health Partners, 1661 Feehanville, Suite 200, Mount Prospect, IL 60058.
3. Respondent Advocate Christ Hospital Health Partners is a not-for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal address at c/o Health Partners Operations - Advocate Health Partners, 1661 Feehanville, Suite 200, Mount Prospect, IL 60058.
4. Respondent Advocate Good Samaritan Health Partners, Ltd. is a for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal address at c/o Health Partners

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Operations - Advocate Health Partners, 1661 Feehanville, Suite 200, Mount Prospect, IL 60058.

5. Respondent Advocate Good Shepherd Health Partners, Ltd. is a not-for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal address at c/o Health Partners Operations - Advocate Health Partners, 1661 Feehanville, Suite 200, Mount Prospect, IL 60058.
6. Respondent Advocate Health Centers, Inc. is a for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal address at 2545 S. Dr. Martin Luther King Drive, Chicago, IL 60616.
7. Respondent Advocate Illinois Masonic Health Partners is a not-for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal address at c/o Health Partners Operations - Advocate Health Partners, 1661 Feehanville, Suite 200, Mount Prospect, IL 60058.
8. Respondent Advocate Lutheran General Health Partners, Inc. is a not-for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal address at c/o Health Partners Operations - Advocate Health Partners, 1661 Feehanville, Suite 200, Mount Prospect, IL 60058.
9. Respondent Advocate-South Suburban Health Partners is a not-for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal address at c/o Health Partners Operations - Advocate Health Partners, 1661 Feehanville, Suite 200, Mount Prospect, IL 60058.

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10. Respondent Advocate Trinity Health Partners is a not-for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal address at c/o Health Partners Operations - Advocate Health Partners, 1661 Feehanville, Suite 200, Mount Prospect, IL 60058.
11. Respondent Dreyer Clinic, Inc. is a for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal address at 1877 West Downer Place, Aurora, IL 60506.
12. Advocate Health and Hospitals Corporation is a not-for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal address at 2025 Windsor Drive, Oak Brook, IL 60523.
13. 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 AHP” means AHP, its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.

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- B. “Respondent Advocate Bethany Health Partners” means Advocate Bethany Health Partners, 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 Advocate Christ Hospital Health Partners” means Advocate Christ Hospital Health Partners, its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- D. “Respondent Advocate Good Samaritan Health Partners, Ltd.” means Advocate Good Samaritan Health Partners, Ltd., its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- E. “Respondent Advocate Good Shepherd Health Partners, Ltd.” means Advocate Good Shepherd Health Partners, Ltd., 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.
- F. “Respondent Advocate Health Centers, Inc.” means Advocate Health Centers, Inc. its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it,

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and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.

- G. “Respondent Advocate Illinois Masonic Health Partners” means Advocate Illinois Masonic Health Partners, its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- H. “Respondent Advocate Lutheran General Health Partners, Inc.” means Advocate Lutheran General Health Partners, 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.
- I. “Respondent Advocate-South Suburban Health Partners” means Advocate-South Suburban Health Partners, its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- J. “Respondent Advocate Trinity Health Partners” means Advocate Trinity Health Partners, 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.
- K. “Respondent Dreyer Clinic, Inc.” means Dreyer Clinic, Inc., its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the

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respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.

- L. AAdvocate Health and Hospitals Corporation” means Advocate Health and Hospitals Corporation, 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.
- M. AAdvocate Hospital” means Advocate Bethany Hospital, Advocate Christ Medical Center, Advocate Good Samaritan Hospital, Advocate Good Shepherd Hospital, Advocate Illinois Masonic Medical Center, Advocate Lutheran General Hospital, Advocate South Suburban Hospital, or Advocate Trinity Hospital.
- N. AAdvocate System Physicians” means those physicians whose physician services are provided to payors by Advocate Health and Hospitals Corporation, Advocate Health Centers, Inc., or Dreyer Clinic, Inc. and for which such entity receives all financial remuneration from the payor for the physician services.
- O. ANon-exclusive arrangement” means an arrangement that 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.
- P. AMedical group practice” means a bona fide, integrated firm in which physicians practice medicine together as partners, shareholders, owners, or employees, or in which only one physician practices medicine.

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- Q. AParticipate” in an entity or an arrangement means (1) to be a partner, shareholder, owner, member, or employee of such entity or arrangement, or (2) to provide services, agree to provide services, or offer to provide services to a payor through such entity or arrangement. This definition applies to all tenses and forms of the word Aparticipate,” including, but not limited to, Aparticipating,” Aparticipated,” and Aparticipation.”
- R. APayor” 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.
- S. APerson” means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.
- T. APhysician” means a doctor of allopathic medicine (“M.D.”), a doctor of osteopathic medicine (“D.O.”), or a doctor of podiatric medicine (“D.P.M.”).
- U. APreexisting 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 AHP pursuant to Paragraph V.A.2. of this Order, or by any Respondent pursuant to Paragraph VII. of this Order, of such payor’s right to terminate such contract.
- V. APrincipal address” means either (1) primary business address, if there is a business address, or (2) primary residential address, if there is no business address.
- W. The AProgram” means the non-exclusive arrangement that AHP refers to as its Clinical Integration Program, which was implemented by AHP on January 1, 2004, with respect to fee-for-service contracts with payors, and which requires

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participating physicians to agree to adhere to certain health care information technology, quality, and cost/utilization initiatives, as well as to being monitored and subjected to a system of enforcement mechanisms consisting of financial incentives and sanctions, including termination from the Program; *provided further*, that the Program includes modifications to those initiatives and those monitoring and enforcement mechanisms that are related to improving quality of care or reducing health care costs.

- X. AQualified 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.
- Y. AQualified 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:

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- 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.
- Z. AQualified arrangement" means a qualified clinically-integrated joint arrangement or a qualified risk-sharing joint arrangement.

II.

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

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- 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 any Respondent(s);
- B. Exchanging or facilitating in any manner the exchange or transfer of information among physicians concerning any physician's willingness to deal with a payor, or the terms or conditions, including price terms, on which the physician is willing to deal with a payor;
- C. Attempting to engage in any action prohibited by 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:

- (a) involving any Respondent 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

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qualified arrangement, so long as, for three years from the date this Order becomes final, such qualified joint arrangement is a non-exclusive arrangement;

- (b) solely involving Advocate System Physicians; or
- (c) where such agreement or conduct is solely related to Respondents' participation in the Program;

provided further that: (1) nothing in this Order shall be construed as a determination by the Commission, or its staff, that the Program is, or was at any time, a qualified arrangement; and (2) this proviso (c) to Paragraph II. of the Order is a determination by the Commission, and its staff, only that participation in the Program shall not constitute a violation of this Order and is not a determination that such participation does or does not violate any law enforced by the Commission.

III.

IT IS FURTHER ORDERED that, for three (3) years from the date this Order becomes final, for any arrangement under which any Respondent would act as an agent, or as a messenger, on behalf of any physician, or any medical group practice, with any payor regarding contracts, such Respondent shall notify the Secretary of the Commission in writing ("Paragraph III. Notification") at least sixty (60) days prior to participating in 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

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anticompetitive effects of the proposed arrangement, such as those prohibited by this Order.

PROVIDED FURTHER that:

- (a) if, within sixty (60) 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 providing such notification, then that Respondent shall not participate in the proposed arrangement prior to the expiration of thirty (30) days after substantially complying with such request, or such shorter waiting period as may be granted in writing from the Bureau of Competition;
- (b) 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 the proposed arrangement does or does not violate this Order or any law enforced by the Commission;
- (c) the absence of notice that the proposed 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 proposed arrangement has been approved;
- (d) receipt by the Commission of any Paragraph III. Notification is not to be construed as a determination by the Commission, or its staff, that the proposed arrangement does or does not violate this Order or any law enforced by the Commission; and
- (e) Paragraph III. Notification shall not be required prior to participating in any arrangement described at Paragraph III. of this Order pursuant to: (i) the Program; (ii) an arrangement

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solely involving Advocate System Physicians; or (iii) participation in any arrangement for which Paragraph III. Notification has previously been given.

IV.

IT IS FURTHER ORDERED that for three (3) years from the date this Order becomes final, pursuant to each qualified arrangement in which any Respondent is a participant, that Respondent 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 qualified arrangement relating to price or other terms or conditions of dealing with any payor; or
- B. Contacting a payor, pursuant to a qualified 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 qualified arrangement.

PROVIDED FURTHER that Paragraph IV. Notification shall include the following information regarding the qualified arrangement pursuant to which any Respondent intends to engage in the above identified conduct:

- a. the number of physicians in each specialty participating in the qualified arrangement;
- b. a description of the qualified 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 qualified arrangement;

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- 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 qualified arrangement;
- e. a description of any procedures proposed to be implemented to limit possible anticompetitive effects resulting from the qualified 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 FURTHER that:

(a) 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 providing such Paragraph IV Notification, that Respondent shall not participate in any arrangement 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;

(b) 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 the proposed arrangement does or does not violate this Order or any law enforced by the Commission;

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(c) the absence of notice that the qualified 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 qualified arrangement has been approved;

(d) receipt by the Commission of any Paragraph IV. Notification regarding participation pursuant to a qualified arrangement is not to be construed as a determination by the Commission that any such qualified arrangement does or does not violate this Order or any law enforced by the Commission; and

(e) Paragraph IV. Notification shall not be required prior to participating in: (i) the Program; or (ii) any arrangement described at Paragraph IV.A. or Paragraph IV.B. of this Order solely involving Advocate System Physicians or any qualified arrangement for which Paragraph IV Notification has previously been given.

V.

IT IS FURTHER ORDERED that Respondent AHP 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 delivery confirmation or electronic mail with return confirmation to:
 - a. every physician, excluding Advocate System Physicians, who participates, or has participated, in any Respondent at any time since January 1, 2001;
 - b. each current officer, director, manager, and employee, excluding Advocate System Physicians, of each Respondent; and

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- c. each current officer, director, and manager of Advocate Health and Hospitals Corporation, Advocate Health Centers, Inc., or Dreyer Clinic, Inc.; and
 2. first-class mail, return receipt requested, and with the letter attached as Appendix 1 to this Order, to the chief executive officer of each payor with whom any Respondent 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 Appendix 1 need not be included in the mailings to those payors identified at Appendix 2.
- B. Terminate, without penalty or charge, and in compliance with any applicable laws, any preexisting contract with any payor for the provision of provider services, excluding those payors identified at Appendix 2, at the earlier of: (1) receipt by Respondent AHP of a written request to terminate such contract from any payor that is a party to the contract, or (2) the earliest termination date, renewal date (including any automatic renewal date), or the anniversary date of such contract; *provided, however*, a preexisting contract may extend beyond any such termination date, renewal date, or anniversary date no later than one (1) year after the date that the Order becomes final if, prior to such termination, renewal, or anniversary date, (a) the payor submits to Respondent AHP a written request to extend such contract to a specific date no later than one (1) year after the date that this Order becomes final, and (b) Respondent AHP has determined not to exercise any right to terminate under the terms of the contract; *provided further*, that any payor making such request to extend a contract retains the right, pursuant to part (1) of Paragraph V.B. of this Order, to terminate the contract at any time.

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- C. Within ten (10) days of receiving a written request from a payor, pursuant to Paragraph V.B. of this Order, distribute, by first-class mail, return receipt requested, a copy of that request to each physician, excluding Advocate System Physicians, participating in such contract as of the date that Respondent AHP receives such request.
- D. 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, excluding Advocate System Physicians, who begins participating in any Respondent, and who did not previously receive a copy of this Order and the Complaint from a Respondent within thirty (30) days of the time that such participation begins;
 - b. each payor who contracts with a Respondent for the provision of physician services, and who did not previously receive a copy of this Order and the Complaint from a Respondent, within thirty (30) days of the time that such payor enters into such contract;
 - c. each person who becomes an officer, director, manager, or employee, excluding Advocate System Physicians, of any Respondent, and who did not previously receive a copy of this Order and the Complaint from a Respondent, within thirty (30) days of the time that he or she assumes such position; and
 - d. each person who becomes an officer, director, or manager of Advocate Health and Hospitals Corporation, Advocate Health Centers, Inc., or Dreyer Clinic, Inc., and who did not previously receive a copy of this Order and Complaint from a Respondent,

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

2. Annually publish in any official report or newsletter sent to all physicians who participate in any Respondent, excluding Advocate System Physicians, a copy of this Order and the Complaint with such prominence as is given to regularly featured articles.
- E. Notify the Commission at least thirty (30) days prior to any proposed: (1) dissolution of any Respondent; (2) acquisition, merger, or consolidation of any Respondent; or (3) other change in any Respondent 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 any Respondent.

VI.

IT IS FURTHER ORDERED that Respondent AHP shall 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, among other information that may be necessary:

- A. the name, address, and telephone number of each payor with which each Respondent has had any contact during the one (1) year period preceding the date for filing such report;
- B. the identity of each payor sent a copy of the letter attached as Appendix 1, the response of each payor to that letter, and the status of each contract to be terminated pursuant to that letter;
- C. copies of the delivery confirmations or electronic mail with return confirmations required by Paragraph V.A.1., and copies

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of the signed return receipts required by Paragraphs V.A.2., V.B.; and

- D. a detailed description of the manner and form in which each Respondent has complied and is complying with this Order. Such report is to include, for the calendar year prior to that in which the report is filed, among other required information that may be required, data and documents described at Appendix 3 of this Order.

VII.

IT IS FURTHER ORDERED that, if Respondent AHP fails to comply with all or any portion of Paragraph V. or Paragraph VI. of this Order, within sixty (60) days of the time set forth in such paragraph, then each Respondent shall, within thirty (30) days thereafter, comply with each portion of Paragraph V. and Paragraph VI. of this Order with which Respondent AHP did not comply, with regard to that Respondent.

VIII.

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 its respective principal address within twenty (20) days of such change in address.

IX.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, including but not limited to the implementation of the Program:

- A. Respondents shall permit any duly authorized representative of the Commission access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, calendars, and other records and documents in

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the possession, or under the control, of Respondents relating to any matter contained in this Order;

- 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 Respondents.

X.

IT IS FURTHER ORDERED that this Order shall terminate on February 7, 2027.

By the Commission.

Appendix 1

[letterhead of AHP]

[name of payor's CEO]
[address]

Dear _____:

Enclosed is a copy of a complaint and a consent order ("Order") issued by the Federal Trade Commission against Advocate Health Partners ("AHP") and others.

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

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If you do not make a written request to terminate the contract, Paragraph V.B. further provides that the contract will terminate on the earlier of the contract's termination date, renewal date (including any automatic renewal date), or anniversary date, which is [date].

You may, however, ask AHP to extend the contract beyond [date], the termination, renewal, or anniversary 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.

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,

[AHP to fill in information in brackets]

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Appendix 2

UniCare Health Plans

CIGNA HealthCare

Aetna Health Plans

HFN, Inc.

Great-West Healthcare

Blue Cross Blue Shield of Illinois

Health Care Services Corporation d/b/a Blue Cross Blue Shield
of Illinois

Humana Health Plans

Advocate Associates

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Appendix 3

Document and Data Request

1. In mutually agreeable electronic format:
 - a. for each physician, each medical group practice, and any other aggregation of physicians participating in the Program for which data relevant to performance in the Program is collected, data sufficient to determine such performance for each measurement of performance analyzed by AHP pursuant to the Program. Such measurements of performance may include, but are not limited to any reports or report cards that compare physician performance against benchmarks or guidelines/protocols. Production of the AHP Clinical Integration Program Database will satisfy this requirement, provided that such database is in substantially the same format and contains substantially the same fields of data as the AHP Clinical Integration Program Database provided to Commission staff by letter dated June 30, 2006.
 - b. for each physician participating in the Program, his or her (i) medical group practice name; (ii) practice location; (iii) specialty; (iv) AHP's identification number used to track or report performance under the Program; and (v) and affiliation with a physician-hospital organization or any other group whose performance is analyzed under the Program. Production of the AHP Provider Relations Database will satisfy this requirement, provided that such database is in substantially the same format and contains substantially the same fields of data as the AHP Provider Relations Database provided to Commission staff by letter dated June 30, 2006.

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- c. with regard to the incentive funds under the Program: (i) data sufficient to determine the amounts to be allocated, paid, and withheld for (a) each physician and (b) each group of physicians whose performance is analyzed under the Program on a group or aggregated basis; and (ii) documents, data, or a written explanation sufficient to determine the method of and formulas used in calculating such amounts and the numerical inputs for each physician or group of physicians. Production of the AHP Annual Clinical Integration Incentive Distribution Report will satisfy this requirement, provided that such report is in substantially the same format and contains substantially the same fields of data as the AHP Annual Clinical Integration Incentive Distribution Report provided to Commission staff by letter dated June 30, 2006.
2. All documents in the nature of strategic and business plans and budgets which relate to the Program.
3. Documents sufficient to identify all changes to the Program.
4. All analyses of the Program or of physician performance under the Program that are published or provided to: (i) payors; and (b) Respondents' Boards of Directors.
5. For those measurements of performance analyzed by AHP under the Program, any data or documents created or maintained in the ordinary course of business that compare the performance of physicians participating in the Program and who have medical staff privileges at an Advocate Hospital with the performance of all other physicians with medical staff privileges at the same Advocate Hospital.
6. For each measurement of performance analyzed by AHP under the Program, any data or documents created or maintained in the ordinary course of business that compare the performance of physicians under the Program with the

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performance of those physicians under any capitated contracts.

7. Data reflecting the performance of physicians under clinical quality initiatives conducted by AHP under its agreement with HMO Illinois.

**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 Advocate Health Partners (“AHP”) and other related parties. The agreement settles charges that the proposed respondents violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, by orchestrating, implementing, and participating in agreements among physician practices to fix prices and other terms on which they would deal with health plans and to refuse to deal with certain health plans 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 the proposed respondents that they

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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.

AHP is a “super physician-hospital organization” whose members consist of the non-profit Advocate Health Care Network (“AHCN”) hospital system and eight physician-hospital organizations organized at each of the AHCN hospital sites (the “PHO Respondents”). Each PHO Respondent, in turn, consists of a hospital member (a non-profit subsidiary of AHCN) and a portion of physicians on staff at the hospital. Approximately 2,600 independently practicing physicians in the Chicago metropolitan area belong to the PHO Respondents. In addition, two AHCN for-profit subsidiaries named in the complaint (the “Advocate System Respondents”) contract with health plans, often through AHP, to provide the services of approximately 300 physicians who are employed by or under contract to provide services exclusively to the Advocate System Respondents.

The complaint challenges conduct during the period 1995 to 2004, during which the respondents negotiated the prices and other terms at which their otherwise competing member physicians would provide services to the subscribers of health plans without any efficiency-enhancing integration of their practices sufficient to justify their conduct. Between 1995 and 2001, AHP staff negotiated contracts on behalf of each PHO Respondent, with each PHO Respondent retaining authority to approve offers and counteroffers. Ultimately, each PHO Respondent would approve a negotiated contract on behalf of its member physicians, who could then opt in or opt out of the negotiated contract. In 2001, the respondents centralized contract approval at the super-PHO level. AHP staff continued to negotiate contracts, but AHP (rather than each PHO Respondent) had the

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authority to approve offers and counteroffers and, ultimately, to approve negotiated contracts on behalf of the AHP physicians, who could then opt in or opt out of the negotiated contract. At various times, the Advocate System Respondents participated in these collective negotiations by utilizing AHP to negotiate on their behalf, jointly with AHP's independent physicians. Under both approaches, AHP acted as the collective bargaining agent for physician practices that would otherwise compete.

By 2002, AHP had served as the collective bargaining agent for member physicians in numerous contracts with health plans. Blue Cross Blue Shield of Illinois, however, was one of a few payors that had not contracted with AHP. Instead, Blue Cross contracted directly with the vast majority of AHP physicians. In early 2002, AHP began developing a strategy to force Blue Cross to replace those individual contracts with a group AHP contract, at higher rates than Blue Cross was paying AHP physicians under their individual contracts.

To carry out its strategy to increase the prices Blue Cross paid to AHP physicians, AHP requested that all of its physicians submit what it termed "Agency Agreements," which authorized AHP to terminate the physicians' existing individual contracts with Blue Cross, and to collectively negotiate new contract terms on their behalf. In seeking this authority, AHP reminded its physicians that "[a] major part" of the value AHP offers "has been your access to the favorable rates negotiated by AHP for many of your fee-for-service managed care contracts." Moreover, AHP's President instructed AHP staff to warn physicians attempting to rescind their Agency Agreement that if they rescind there is no hope of getting increases going forward and it will impact everyone's ability to get increases from other payors as [other payors] won't be able to compete [with Blue Cross]." AHP obtained signed Agency Agreements from approximately 1,700 physicians and, on October 1, 2002, terminated the physicians' individual contracts with Blue Cross, effective January 1, 2003.

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AHP ultimately abandoned its plan to coerce Blue Cross to negotiate a group contract on price terms set by AHP, but only after Blue Cross sued AHP for violating the antitrust laws and agreed to make certain payments to AHP as part of the settlement of that dispute. Although Blue Cross's payments to AHP were supposed to be used by AHP to "encourage outcome-based reimbursement" and to support efforts to implement electronic-claim-submission capabilities for all AHP physicians, in fact AHP distributed the money only to physicians that had collectively threatened not to deal with Blue Cross.

The complaint also discusses AHP's dealings with United Healthcare of Illinois, Inc. in 2001, as an example of AHP's collective bargaining on behalf of its member physicians. In order to establish a minimum acceptable rate for the United negotiations, AHP obtained input from each PHO Respondent's Board of Directors and established a single benchmark for the entire group that was higher than the minimum rate that some PHO Respondent's Boards were willing to accept. Ten days after United failed to agree to AHP's benchmark price for physician services, AHP terminated United's contracts not only with the AHP physicians, but also with the AHCN hospitals. After United attempted to enter into direct contracts with AHP physicians, AHP threatened that United would be unable to contract for AHCN hospital services unless United agreed to a group contract for AHP physician services. United ultimately agreed to a group contract containing fees for physician services that were 20 to 30 percent higher than United's direct contracts with individual physicians in the Chicago area.

As the complaint alleges, the respondents engaged in no efficiency-enhancing integration sufficient to justify the conduct challenged in the complaint. Accordingly, the complaint alleges that they violated Section 5 of the FTC Act.

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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 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) 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 the respondents.

Other parts of Paragraph II. reinforce these general prohibitions. Paragraph II.B. prohibits the respondents 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 the 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, Paragraph II excludes certain kinds of agreements from its prohibitions. First, the respondents are not 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, for three years, restrict the ability of, or facilitate the refusal of, physicians who participate in it to contract with payors outside of the arrangement.

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As defined in the proposed order, a Aqualified 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 Aqualified 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.

Second, the respondents are not precluded by Paragraph II. from engaging in conduct that solely involves the Advocate System Respondents, which are subsidiaries of the AHCN hospital system, and other physicians employed by AHCN because they are all part of a single entity.

Finally, the order does not prohibit the respondents from engaging in conduct solely related to their participation in a program that AHP refers to as its AClinical Integration Program” (the AProgram”). The complaint does not allege a violation of the FTC Act with respect to that conduct, and the Commission has made no determination with respect to its legality. The order, while not prohibiting conduct related to the Program, ensures that the illegal conduct charged in the complaint does not continue or recur. In

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addition, Paragraph VI.D. provides certain mechanisms designed to allow the Commission to monitor the further development, implementation, and results of the Program. The Commission retains the ability to challenge conduct related to the Program if it later determines that such a challenge is warranted and would be in the public interest.

Paragraph III., for three years, requires the respondents 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 the 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 AHP and health plans. Paragraph IV. also sets out the information necessary to satisfy the notification requirement.

Paragraph V. imposes certain notification obligations on AHP and requires the termination of contracts that were entered into illegally. Paragraphs V.A. and V.D. require AHP to distribute the complaint and order to (1) physicians who have participated in AHP and the PHO Respondents in the past or who do so within the next three years; (2) to various past and future personnel of the respondents and AHCN subsidiaries that offer physician services to payors; and (3) to payors with whom the respondents have dealt in the past or deal with in the next three years. Paragraph V.B. requires AHP, at any payor's request and without penalty, or, at the latest, within one year after the order is made final, to terminate its existing contracts for the provision of physician services to payors, other than those contracts covering the program which AHP refers to as its Clinical Integration Program. Paragraph V.B. also allows any such contract currently in effect to be extended, upon mutual consent of AHP and the contracted

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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.C. requires AHP to distribute payor requests for contract termination to physicians who participate in the respondents. Paragraph V.E. requires AHP to notify the Commission of certain organizational changes to any respondent or other changes that may affect compliance with the order.

Paragraphs VI., VIII., and IX. impose various obligations on the respondents to report or provide access to information to the Commission to facilitate the monitoring of compliance with the order. Because Paragraphs V. and VI. impose on AHP, in the first instance, obligations to provide notice and reporting on behalf of all respondents, Paragraph VII. requires that any respondents for which AHP has not acted fulfill those obligations.

Finally, Paragraph X. provides that the order will expire in 20 years.

Complaint

IN THE MATTER OF

GENERAL DYNAMICS CORPORATION

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-4181; File No. 061 0150

Complaint, December 27, 2006 — Decision, February 7, 2007

This consent order addresses the acquisition by respondent General Dynamics Corporation of SNC Technologies, Inc. SNC is engaged in the provision of high-explosive melt-pour load, assemble and pack services for artillery shells and mortar rounds. General Dynamics is engaged in providing munitions to the U.S. military and participates in the provision of melt-pour load, assemble and pack services for artillery shells and mortar rounds through its 50% ownership of American Ordnance LLC, a joint venture of General Dynamics and Day & Zimmerman, Inc. The acquisition may substantially lessen competition and create a monopoly in the relevant markets because General Dynamics would own 100% of SNC and 50% of American Ordnance, two of only three competitors in the market for these specific munitions services in the United States and Canada, and because actual, direct, and substantial competition between General Dynamics and American Ordnance would be reduced. The order requires General Dynamics to divest its entire interest in American Ordnance to a buyer approved by the Commission in order to ensure the continuing, viable, and competitive operation of American Ordnance. An order to hold the American Ordnance business separate is included. The hold separate order requires that, prior to divestiture, General Dynamics keep the American Ordnance business separate and apart from its other General Dynamics businesses, and that the company refrain from involvement in the direction, oversight, or influence of American Ordnance's business.

Participants

For the *Commission*: *Christina Perez* and *Tammy L. Imhoff*.

For the *Respondent*: *Janet McDavid* and *Joseph G. Krauss*,
Hogan & Hartson.