

Complaint

IN THE MATTER OF

**PRÁXEDES E. ALVAREZ SANTIAGO, M.D.,
DANIEL PÉREZ BRISEBOIS, M.D.,
JORGE GRILLASCA PALAU, M.D.,
RAFAEL GARCÍA NIEVES, M.D.,
FRANCIS M. VÁZQUEZ ROURA, M.D.,
ANGEL B. RIVERA SANTOS, M.D.,
COSME D. SANTOS TORRES, M.D., AND
JUAN L. VILARÓ CHARDÓN, M.D.**

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

*Docket No. C-4402; File No. 121 0098
Complaint, May 1, 2013 – Decision, May 1, 2013*

This consent order relates to eight physicians located in southwestern Puerto Rico which provide nephrology services for commercial, Medicare and Medicaid patients through contracts with various payers. The Medicaid program in Puerto Rico, Mi Salud, is administered by Administración de Seguros de Salud (ASES), a public corporation that is charged with ensuring that Puerto Rico residents have access to full medical services, including the kidney treatments that respondents provide. ASES contracts with two health plans, Humana Health plans and Triple-S. The complaint alleges that respondents jointly terminated their contracts with Humana and refused to treat patients enrolled in Mi Salud in an effort to extract higher reimbursements rates. The order bars respondents from collectively refusing to treat patients and requires the physicians to notify the Federal Trade Commission before entering into certain joint arrangements.

Participants

For the *Commission*: Linda Blumenreich, Garry Gibbs, Melea Greenfeld, and Tim Slattery.

For the *Respondents*: Carlos A. Del Valle Cruz.

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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

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(“Commission”), having reason to believe that Respondents Práxedes E. Alvarez Santiago, M.D., Daniel Pérez Brisebois, M.D., Jorge Grillasca Palou, M.D., Rafael García Nieves, M.D., Francis M. Vázquez Roura, M.D., Angel B. Rivera Santos, M.D., Cosme D. Santos Torres, M.D., and Juan L. Vilaró Chardón, M.D., (“Respondents”) 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:

I. NATURE OF THE CASE

1. This matter concerns an agreement among eight independent nephrologists in southwestern Puerto Rico to fix the prices and conditions under which they would participate in Mi Salud, the Commonwealth of Puerto Rico’s Medicaid program for providing healthcare services to indigent residents. In furtherance of their conspiracy, Respondents collectively terminated their participation in the Mi Salud program in southwestern Puerto Rico after the program’s regional administrator, Humana Health Plans of Puerto Rico, Inc. (“Humana”) refused to accede to Respondents’ demands to restore a cut in reimbursements for certain patients eligible for benefits under both Medicare and Mi Salud (“dual eligibles”). After Respondents terminated their service agreements with Humana, they refused to treat any of Humana’s Mi Salud patients. As a result, Respondents have unreasonably restrained competition and engaged in unfair methods of competition in violation of the Federal Trade Commission Act.

II. RESPONDENTS

2. Respondents are individuals licensed to practice medicine in the Commonwealth of Puerto Rico and engaged in the business of providing nephrology services to patients for a fee. They represent all of the nephrologists in the southwest region who participate in the Humana Mi Salud program and almost 90 percent of all nephrologists in the region. Their respective names and business addresses are:

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- (1) Praxedes E. Alvarez Santiago, M.D., 2916 Avenue Emilio Fagot, Suite 1, Ponce, PR 00716-3611.
- (2) Daniel Pérez Brisebois, M.D., 3011 Avenue Emilio Fagot, Ponce, PR 00716.
- (3) Jorge Grillasca Palou, M.D., 302 Torre San Cristobal, Coto Laurel, PR 00780.
- (4) Rafael Garcia Nieves, M.D., 909 Avenue Tito Castro, Torre Medica San Lucas, Suite 723, Ponce, PR 00716.
- (5) Francis M. Vázquez Roura, M.D., 1203 Avenue Muñoz Rivero, Ponce, PR 00717-0634.
- (6) Angel B. Rivera Santos, M.D., Caribbean Medical Centre, Suite 202-2275, Ponce By-Pass, Ponce, PR 00731.
- (7) Cosme D. Santos Torres, M.D., 3011 Avenue Emilio Fagot, Ponce, PR 00716.
- (8) Juan L. Vilaró Chardón, M.D., Edificio Parra, Oficina 302, Ponce, PR 00731.

III. JURISDICTION AND INTERSTATE COMMERCE

3. At all times relevant to this Complaint, Respondents have been engaged in the business of contracting with third parties for the provision of nephrology services to persons for a fee.

4. The general business practices of Respondents, including the acts and practices alleged herein, are in or affecting “commerce,” as defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

5. Except to the extent that competition has been restrained as alleged herein, Respondents have been, and are now, in competition with each other for the provision of nephrology services to persons for a fee.

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6. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over Respondents, who are “persons” within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44, and the proceeding is in the public interest.

IV. BACKGROUND

7. Certain government-sponsored healthcare programs contract with physicians, hospitals, and other providers of healthcare services in a geographic area to create a network of healthcare providers that have agreed to provide healthcare services to enrollees covered under these healthcare programs.

8. To become members of these programs’ provider networks, physicians often enter into contracts with the programs that establish the terms and conditions, including fees and other competitively significant terms, for providing healthcare services to enrollees covered by the government-sponsored healthcare programs. Physicians entering into such contracts often agree to reductions in their usual compensation in order to obtain access to additional patients made available to them by the programs’ coverage of their enrollees. Such reductions in physician fees may permit government-sponsored healthcare programs to reduce their costs and offer broader benefits coverage to their enrollees.

V. MI SALUD PROGRAM

9. Puerto Rico’s Mi Salud program is administered by Administración de Seguros de Salud (“ASES”), a public corporation that is charged with ensuring that the more than 1.5 million indigent residents of Puerto Rico have access to a full complement of medical services. ASES determines the benefits Mi Salud members will receive. ASES contracts with two health plans, Humana and Triple-S, to facilitate the provision of medical services to Mi Salud members and payments to participating providers. Administration of the Mi Salud program takes place in eight regions in Puerto Rico. Humana administers and insures the program in three regions: the east, the southeast, and the southwest. Triple-S administers the program in the other five regions.

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10. In October 2010, the Mi Salud reimbursement program was modified for persons eligible for both Medicare and Medicaid (“dual eligibles”). Under the previous program, called La Reforma, providers received 100 percent of the Medicare established rate for dual eligibles. As the primary payer, Medicare paid 80 percent, and payers administering the Mi Salud program paid the remaining 20 percent coordination of benefits amount (“20 percent COB”). Under the Mi Salud program, providers no longer received a coordination of benefits amount for dual eligibles, except in rare circumstances. Thus, Respondents’ reimbursements were lower under Mi Salud than they had previously been under La Reforma.

11. In November and December of 2010, all participating providers, including Respondents, signed agreements with Humana that reflected the change in the reimbursement policy. For several months after entering into new agreements, Humana continued to reimburse Respondents at the 20 percent COB rate under the preexisting La Reforma policy. As a result Respondents received greater reimbursements than they were entitled to under the new reimbursement policy in their contracts with Humana. In May 2011, Humana began implementing the new reimbursement policy. Humana also began recovering overpayments made to providers, including Respondents, under the old formula by deducting the overpayments from current reimbursements.

VI. ANTICOMPETITIVE CONDUCT

12. Respondents have acted collectively to restrain competition by engaging in conduct such as:

- (a) negotiating, entering into, and implementing agreements to fix the prices upon which they would contract with Humana; and
- (b) terminating their contracts with Humana and refusing to treat Humana patients enrolled in the Mi Salud program in response to Humana’s unwillingness to accede to Respondents’ price-related demands.

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A. Joint Negotiations

13. Respondents' conduct unfolded in three phases. First, between October 2011 and March 2012, Respondents repeatedly pressed Humana for higher reimbursement rates and ultimately collectively terminated their participation in the Mi Salud program. Second, immediately after terminating their contracts with Humana, Respondents refused to treat Humana's Mi Salud patients. Finally, ASES, concerned over access by Mi Salud patients to nephrology services in the southwest region, acquiesced to Respondents' demands and retroactively reinstated the 20 percent COB reimbursement rate.

14. Respondents began pressing their case for the reinstatement of the higher reimbursement in an October 28, 2011 email to Humana. In that email, Respondent Jorge Grillasca Palou, MD, wrote:

Under the present conditions, I can anticipate that I will not continue offering services to Humana patients if these [policies for payment for services to dual eligibles] are not modified. Please remember that the renal population requires our services to stay alive and in good health. I am legitimately concerned that service may be affected for patients that can only [emphasis in original] be attended by a nephrologist. Loosing [sic] nephrology services for your population may create a complicated and dangerous situation, especially for critical care patients in a hospital.

He requested that Humana "hold an urgent meeting with me and other colleagues that share the same concern." Dr. Grillasca copied the other Respondents on the email.

15. On December 8, 2011, Humana met with two of the Respondents, Dr. Angel Rivera Santos and Dr. Daniel Perez Brisebois, to discuss the reimbursement policy. During the meeting they pressed Humana to pay the 20 percent COB, and Dr. Perez handed to Humana a proposed schedule of codes for which Respondents wanted rate increases.

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16. On December 9, 2011, the day after the meeting, Respondent Dr. Rivera sent to Humana an email stating,

I understand as well that I have the right to receive the 20 percent that has been denied. It will depend on these issues if I decided to continue my professional relationship with Humana Mi Salud. Also remember that I am waiting for your response related to the newly proposed rates that were handed to you yesterday by my colleague Dr. Daniel Perez. I will expect your answer concerning these issues on or before December 16, 2011.

Dr. Rivera copied all of the other Respondents on the email.

17. In a separate email sent to Humana on December 9, 2011, Dr. Grillasca expressed his support for Dr. Rivera's demand for the reinstatement of the 20 percent COB and implementation of Respondents' proposed fee schedule. "I am echoing the expressions of my colleague Dr. Angel Rivera Santos. I hope we communicate early next week to solve the pending issues." Dr. Grillasca copied all of the other Respondents on the email.

18. Hoping to avoid the possible loss of nephrology services for Mi Salud patients, ASES called a meeting of Respondents, Humana and others on February 16, 2012. ASES explained at that meeting that the new reimbursement formula was a government rule and would not be changed because the government had a very limited budget. Despite the ASES explanation, Respondents continued to jointly seek a rate increase. At the end of the meeting Respondents presented Humana a revised schedule of fees and codes for which they wanted increased payments.

19. Two weeks later Respondents again sent Humana a schedule of proposed fee increases and threatened to terminate their contracts with Humana if the payer did not agree to their price demands by March 1, 2012. Dr. Grillasca sent an email to Humana on February 28, 2012, stating,

[W]e sent you a proposal of revised rates so I can continue offering nephrology and dialysis services in the south of Puerto Rico I am sending once again the proposed

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rates in this e-mail. If I do not receive an answer before March 1, 2012, I will think that you are no longer interested in my services and I shall rescind providing services to Humana Mi Salud patients effective March 1.

Dr. Grillasca copied all of the other Respondents on the email.

B. Contract Termination and Refusal to Treat Humana Mi Salud Nephrology Patients

20. When Humana failed to agree to their price demands by the March 1, 2012 deadline, Respondents carried out their joint threat to terminate their contracts with Humana. Between March 1 and March 5, 2012, each of the Respondents sent to Humana a virtually identical termination letter. Respondents terminated their contracts with Humana. Dr. Grillasca copied the other Respondents on his termination letter to Humana.

21. Respondents also collectively agreed to withhold nephrology services from Humana Mi Salud patients, despite provisions in their contracts with Humana requiring them to provide 120 days written notice before terminating their medical services. On at least two instances Respondents collectively refused to treat Humana's Mi Salud patients needing urgent nephrology services because of their dispute with Humana over reimbursement rates.

22. On March 13, 2011, a multi-specialty practice group near Ponce sent to the emergency room of a hospital in Ponce a patient needing admission because of critical renal failure. Dr. Grillasca told the hospital emergency room staff that none of the nephrologists were accepting Humana's Mi Salud patients because of a disagreement with Humana over rates. The patient's condition worsened, and because the hospital could not identify a nephrologist in the southwest region to provide medical services to the patient, it became necessary to transfer the patient to another hospital 74 miles away, in San Juan. An official from the practice group emailed Humana representatives regarding the situation, stating that, "the nephrologists in our region are not accepting the Mi Salud plan. According to Dr. Jorge Grillasca, this is due to a disagreement regarding rates. Meanwhile, the

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nephrology patients are suffering the consequences.” The official asked for an evaluation of the situation as soon as possible, “since this problem could have greater consequences for nephrology patients.”

23. On the same day, Respondents refused to treat a Humana Mi Salud patient admitted to another hospital in Ponce with a renal illness. The patient was pregnant, had a history of bronchial asthma, and needed nephrology services. According to the notes of the nurses and the unit coordinator, calls were made to all eight of the Respondents, but all said they did not accept Mi Salud patients. Hospital staff recommended transferring the patient to another hospital 67 miles away, but the family objected because of the distance.

24. Respondents eventually began treating patients again only after being ordered to do so by the Office of the Health Advocate, who determined that Respondents’ immediate terminations violated the notice provision in their contracts and the continuation of services requirement in the Puerto Rico Patient’s Bill of Rights and Responsibilities.

C. Resulting Increase in Reimbursement

25. Respondents’ refusal to treat Humana’s Mi Salud patients forced ASES to ultimately accede to Respondents’ demands for reinstatement of the policy requiring payment of the 20 percent COB. On June 13, 2012, ASES issued Circular Letter No. 12-0613, stating that retroactive to March 16, 2012, it would require insurers to pay the 20 percent COB to all healthcare providers, essentially abandoning the new reimbursement formula and adopting the reimbursement policy under La Reforma. ASES reinstated the 20 percent COB because it was concerned about lack of access to nephrology services for its Mi Salud members, and believed that it had no other choice but to accede to adopting the 20 percent COB reimbursement policy. ASES believes that reinstating this reimbursement will increase the annual costs of the Mi Salud program by between \$4 and \$6 million.

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VII. NO LEGITIMATE JUSTIFICATION FOR THE CONDUCT

26. Respondents' conduct is not reasonably related to achieving any efficiency-enhancing integration. Respondents have undertaken no activities to integrate their delivery of nephrology services and thus cannot justify the conduct described in the foregoing paragraphs. They neither shared financial risk in providing nephrology services nor clinically integrated their delivery of care to patients.

VIII. ANTICOMPETITIVE EFFECTS

27. Respondents' actions have the purpose and had the effect of unreasonably restraining trade and hindering competition in the provision of nephrology services in the southwest region of Puerto Rico by:

- (a) depriving third-party payers and consumers of the benefits of such competition;
- (b) increasing prices of nephrology services to Mi Salud; and
- (c) collectively withholding treatment from Mi Salud patients, resulting in significant and real consequences to patients.

IX. VIOLATION OF THE FTC ACT

28. The acts and practices described above constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such 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 has caused this Complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C., this first day of May, 2013.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of certain acts and practices of Praxedes E. Alvarez Santiago, M.D., Daniel Pérez Brisebois, M.D., Jorge Grillasca Palou, M.D., Rafael Garcia Nieves, M.D., Francis M. Vázquez Roura, M.D., Angel B. Rivera Santos, M.D., Cosme D. Santos Torres, M.D., and Juan L. Vilaró Chardón, M.D., hereinafter referred to as “Respondents,” and Respondents having been furnished thereafter with a copy of the draft Complaint that counsel for the Commission proposed to present to the Commission for its consideration and which, if issued, would charge 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 Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by any Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents

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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, and having duly considered the comment filed by an interested person, 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 Praxedes E. Alvarez Santiago, M.D., is an individual licensed to practice medicine in the Commonwealth of Puerto Rico and engaged in the business of providing nephrology services to patients for a fee with a business address of 2916 Avenue Emilio Fagot, Suite 1, Ponce, PR 00716-3611.
2. Respondent Daniel Pérez Brisebois, M.D., is an individual licensed to practice medicine in the Commonwealth of Puerto Rico and engaged in the business of providing nephrology services to patients for a fee with a business address of 3011 Avenue Emilio Fagot, Ponce, PR 00716.
3. Respondent Jorge Grillasca Palou, M.D., is an individual licensed to practice medicine in the Commonwealth of Puerto Rico and engaged in the business of providing nephrology services to patients for a fee with a business address of 302 Torre San Cristobal, Coto Laurel, PR 00780.
4. Respondent Rafael Garcia Nieves, M.D., is an individual licensed to practice medicine in the Commonwealth of Puerto Rico and engaged in the business of providing nephrology services to patients for a fee with a business address of 909 Avenue Tito Castro, Torre Medica San Lucas, Suite 723, Ponce, PR 00716.
5. Respondent Francis M. Vázquez Roura, M.D., is an individual licensed to practice medicine in the

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Commonwealth of Puerto Rico and engaged in the business of providing nephrology services to patients for a fee with a business address of 1203 Avenue Muñoz Rivero, Ponce, PR 00717-0634.

6. Respondent Angel B. Rivera Santos, M.D., is an individual licensed to practice medicine in the Commonwealth of Puerto Rico and engaged in the business of providing nephrology services to patients for a fee with a business address of Caribbean Medical Centre, Suite 202-2275, Ponce By-Pass, Ponce, PR 00731.
7. Respondent Cosme D. Santos Torres, M.D., is an individual licensed to practice medicine in the Commonwealth of Puerto Rico and engaged in the business of providing nephrology services to patients for a fee with a business address of 3011 Avenue Emilio Fagot, Ponce, PR 00716.
8. Respondent Juan L. Vilaró Chardón, M.D., is an individual licensed to practice medicine in the Commonwealth of Puerto Rico and engaged in the business of providing nephrology services to patients for a fee with a business address of Edificio Parra, Oficina 302, Ponce, PR 00731.
9. The Federal Trade Commission has jurisdiction over 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. “Respondents” means the following individuals (both individually and collectively): Praxedes E. Alvarez Santiago, M.D.; Daniel Pérez Brisebois, M.D.; Jorge

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Grillasca Palou, M.D.; Rafael Garcia Nieves, M.D.; Francis M. Vázquez Roura, M.D.; Angel B. Rivera Santos, M.D.; Cosme D. Santos Torres, M.D.; and Juan L. Vilaró Chardón, M.D.

- B. “Commission” means the Federal Trade Commission.
- C. “Government Entity” means any Federal, state, local or non-U.S. government, or any court, legislature, government agency, or government commission, or any judicial or regulatory authority of any government.
- D. “Medical 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.
- E. “Non-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 Payers on an individual basis or through any other arrangement.
- F. “Order Date” means the date this Decision and Order is issued by the Commission to become final and effective.
- G. “Participate” 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 “participate,” including, but not limited to, “participating,” “participated,” and “participation.”

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- H. “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. The term “Payor” includes any Person that develops, leases, or sells access to networks of Physicians.
- I. “Person” means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, or other business or Government Entity, and any subsidiaries, divisions, groups or affiliates thereof.
- J. “Physician” means a doctor of allopathic medicine (“M.D.”) or a doctor of osteopathic medicine (“D.O.”).
- K. “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.
- L. “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 above-described arrangement is reasonably necessary to obtain significant efficiencies that result from such integration through the arrangement.
- M. “Qualified Risk-Sharing Joint Arrangement” means an arrangement to provide Physician services in which:

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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 Payers;
 - 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 above-described arrangement is reasonably necessary to obtain significant efficiencies that result from such integration through the arrangement.

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N. “Qualified 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:

- A. entering into, adhering to, Participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding:
 - 1. to negotiate on behalf of another Physician(s) with any Payor;
 - 2. to refuse to deal, or threaten to refuse to deal with any Payor; or
 - 3. regarding any term, condition, or requirement upon which another Physician(s) deals, or is willing to deal, with any Payor, including, but not limited to, price terms.
- B. exchanging or facilitating in any manner the exchange or transfer of information with another Physician(s) concerning that Physician’s willingness to deal with a Payor, or the terms or conditions, including price terms, on which that Physician(s) is willing to deal with a Payor;
- C. entering into, adhering to, Participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding between or among another Physician(s) to withhold Physician services from any Person;

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- D. exchanging or facilitating in any manner the exchange or transfer of information among Physicians concerning any Physician's willingness to offer or withhold Physician services from any Person;
- E. attempting to engage in any action prohibited by Paragraphs II.A, II.B., II.C. or II.D. of this Order; and
- F. encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any Person to engage in any action that would be prohibited by Paragraph II of this Order;

provided, however, that nothing in this Paragraph II shall prohibit any agreement or conduct between the Respondents that, subject to the requirements of Paragraphs III of this Order, is reasonably necessary to form, Participate in, or take any action in furtherance of, a Qualified Arrangement, so long as such Qualified Arrangement is a Non-exclusive Arrangement.

III.

IT IS FURTHER ORDERED that:

- A. For three (3) years from the date this Order becomes final, pursuant to each Qualified Arrangement in which any Respondent is a Participant, Respondent shall notify the Commission in writing ("Paragraph III Notification") at least sixty (60) days prior to:
 - 1. 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
 - 2. 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

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any Physician or Medical Group Practice in such Qualified Arrangement.

- B. The Paragraph III Notification shall include the following information regarding the Qualified Arrangement:
1. the total number of Physicians and the number of Physicians in each specialty Participating in the Qualified Arrangement;
 2. a description of the Qualified Arrangement, including its purpose and geographic area of operation;
 3. a description of the nature and extent of the integration and the efficiencies resulting from the Qualified Arrangement;
 4. 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;
 5. a description of any procedures proposed to be implemented to limit possible anticompetitive effects resulting from the Qualified Arrangement or its activities; and
 6. 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.
- C. If, within sixty (60) days from the Commission's receipt of the Paragraph III Notification, a representative of the Commission makes a written request to any Respondent for additional information, then Respondent shall not Participate in any arrangement described in the Respondent's Paragraph III Notification prior to the expiration of thirty (30)

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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;

- D. 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 Qualified Arrangement does or does not violate this Order or any law enforced by the Commission;
- E. The absence of notice that the proposed 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 proposed Qualified Arrangement has been approved;
- F. Receipt by the Commission of any Paragraph III Notification regarding Participation pursuant to a proposed Qualified Arrangement is not to be construed as a determination by the Commission that any such proposed Qualified Arrangement does or does not violate this Order or any law enforced by the Commission; and
- G. Paragraph III Notification shall not be required prior to Participating in any Qualified Arrangement for which Paragraph III Notification has previously been given and where any waiting period for the previously submitted notification pursuant to this Order has expired.

IV.

IT IS FURTHER ORDERED that each Respondent shall:

- A. Within thirty (30) days after the Order Date distribute a copy of this Order and the Complaint:

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1. by (i) first-class mail with delivery confirmation, (ii) electronic mail with return receipt confirmation, or (iii) in-person delivery with a signed acknowledgment of receipt by the recipient, to:
 - a. every Physician who Participates, or has Participated, in Respondent's Medical Practice Group at any time since January 1, 2010; and
 - b. each current officer, director, manager, and employee of Respondent's Medical Group Practice;
 2. by first-class mail, return receipt requested to the highest-ranking executive (e.g., chief executive officer) of each Payor with whom Respondent has a record of being in contact since January 1, 2010, regarding contracting for the provision of Physician services.
- B. For three (3) years from the Order Date distribute a copy of this Order and the Complaint:
1. by (i) first-class mail, return receipt requested, (ii) electronic mail with return receipt confirmation, or (iii) in-person delivery with a signed acknowledgment of receipt from the recipient, to:
 - a. each Physician who begins Participating in Respondent's Medical Group Practice, and who did not previously receive a copy of this Order and the Complaint from Respondents within thirty (30) days of the time that such Participation begins;
 - b. each Person who becomes an officer, director, manager, or employee of the Respondent's Medical Group Practice, and who did not previously receive a copy of this Order and the Complaint from Respondent, within thirty (30)

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days of the time that he or she assumes such position; and

2. by first-class mail, return receipt requested, to the highest-ranking executive (e.g., chief executive officer) of each Payor who contracts with Respondent for the provision of Physician services, and who did not previously receive a copy of this Order and the Complaint from Respondent, within thirty (30) days of the time that such Payor enters into such contract.

V.

IT IS FURTHER ORDERED that:

- A. Within sixty (60) days from the Order Date, each Respondent shall file a verified written report setting forth in detail the manner in which the Respondent intends to comply, is complying and has complied with the Order.
- B. One (1) year after the Order Date, annually thereafter for the next three (3) years on the anniversary of the Order Date, and at such other times as the Commission may by written notice require, each Respondent shall file a verified written report setting forth in detail the manner in which the Respondent intends to comply, is complying and has complied with the Order.
- C. Each of the above-described reports by a Respondent shall include, among other information that may be necessary:
 1. The name, address, and telephone number of each Payor with which Respondent has had any contact during the one (1) year period preceding the date for filing such report;
 2. Copies of the delivery confirmations obtained from the recipients by the Respondent in connection

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with the Respondent's distribution of the Order and Complaint as required by Paragraph IV.

VI.

IT IS FURTHER ORDERED that each Respondent shall notify the Commission of any change in Respondent's Principal Address within twenty (20) days of such change in address.

VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to any Respondent, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission, access, during office hours of Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession, or under the control, of Respondent relating to compliance with this Order, which copying services shall be provided by Respondent at Respondent's expense.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on May 1, 2033.

By the Commission.

Analysis to Aid Public Comment

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 Práxedes E. Álvarez Santiago, M.D., Daniel Pérez Brisebois, M.D., Jorge Grillasca Palou, M.D., Rafael García Nieves, M.D., Francis M. Vázquez Roura, M.D., Angel B. Rivera Santos, M.D., Cosme D. Santos Torres, M.D., and Juan L. Vilaró Chardón, M.D. (“Respondents”). The agreement settles charges that Respondents violated Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by jointly negotiating contracts to fix the prices for their services and by collectively refusing to deal with a third-party payer in Puerto Rico.

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 consent order final.

The purpose of this analysis is to facilitate public comment on the proposed consent order. The analysis is not intended to constitute an official interpretation of the agreement and proposed consent 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 Respondents that they violated the law or that the facts alleged in the proposed complaint (other than jurisdictional facts) are true.

The Proposed Complaint

Respondents are eight independent physicians in southwestern Puerto Rico who provide nephrology services for commercial, Medicare, and Medicaid patients through contracts with various payers. Respondents constitute almost 90 percent of the nephrologists in the southwestern region of Puerto Rico.

Analysis to Aid Public Comment

The Medicaid program in Puerto Rico, Mi Salud, is administered by Administración de Seguros de Salud (“ASES”), a public corporation that is charged with ensuring that the more than 1.5 million indigent residents of Puerto Rico have access to a full complement of medical services. ASES determines the benefits Mi Salud members will receive. ASES contracts with two health plans, Humana Health Plans of Puerto Rico, Inc. (“Humana”) and Triple-S, to facilitate the provision of medical services to Mi Salud members and payments to participating providers. Humana administers the Mi Salud program in the southwestern region of Puerto Rico, where the Respondents do business.

The Mi Salud reimbursement program was modified in October 2010 for Mi Salud members who are also covered by Medicare (“dual eligibles”). Under the previous program Medicare paid 80 percent of its established rate, and payers administering the Mi Salud program paid the remaining 20 percent, known as the coordination of benefits amount (“20 percent COB”). After October 2010, providers no longer received a coordination of benefits amount for dual eligibles, except in rare circumstances. As a result of this change, providers’ reimbursements decreased for dual eligibles under the Mi Salud program.

The proposed complaint alleges that Respondents collectively (1) negotiated in an attempt to extract higher reimbursement rates by fixing the prices upon which Respondents would contract with Humana and (2) terminated their contracts with Humana and refused to treat Humana patients enrolled in the Mi Salud program because Humana would not acquiesce to Respondents’ price-related demands.

The joint price negotiations and collective refusals to deal commenced in late 2011. On October 28, 2011, Dr. Jorge Grillasca sent an email to Humana stating that Humana’s failure to reimburse the full 20 percent COB would force him to discontinue his treatment of Humana’s Mi Salud members and create a dangerous situation for these patients. He requested that Humana “hold an urgent meeting with me and other colleagues that share the same concern.” He copied all of the other Respondents on this email.

Analysis to Aid Public Comment

The meeting occurred on December 8, 2011, when two of the Respondents, Dr. Angel Rivera Santos and Dr. Daniel Perez, met with Humana representatives to discuss the 20 percent COB. During that meeting, Dr. Daniel Perez presented to Humana a fee schedule that proposed higher reimbursement rates. The next day Dr. Rivera Santos wrote an email to Humana stating, “I understand as well that I have the right to receive the 20% that had been denied. It will depend on these issues if I decide to continue my professional relationship with Humana Mi Salud. Also remember that I am waiting for your response related to the newly proposed rates that were handed to you yesterday by my colleague Dr. Daniel Perez.” Dr. Rivera Santos copied all the other Respondents on this email.

The following February 2012, ASES and Humana met with Respondents to discuss the 20 percent COB rule. At the conclusion of the meeting, Dr. Grillasca presented to Humana a fee schedule proposing increased rates. On February 28, 2012, Dr. Grillasca stated in an email to Humana that the payer had until March 1, 2012, to respond to the Respondents’ proposed fee schedule. He copied the other Respondents on this email. When Humana did not respond by the March 1 deadline, all eight Respondents terminated their Mi Salud service agreements with Humana with virtually identical letters.

Respondents immediately ceased providing nephrology services to Humana Mi Salud patients despite having a legal obligation under their contract with Humana to continue providing services for 120 days after giving written notice of termination. The termination of services had significant and real consequences to patients. In one instance, a patient with critical renal failure arrived at an area hospital in need of immediate care and likely long-term dialysis treatment. All of the nephrologists refused to treat the patient, whose condition worsened and who was later transferred to a hospital 74 miles away in San Juan. Dr. Grillasca told hospital personnel that the nephrologists were not taking Mi Salud patients due to a disagreement with Humana over rates. On the same day, Respondents refused to treat another Humana Mi Salud patient admitted to another area hospital with a renal illness. The patient’s family objected to the patient’s

Analysis to Aid Public Comment

transfer to a hospital with nephrology services that was 67 miles away. Respondents eventually began treating patients again only after being ordered to do so by Puerto Rico's Office of the Health Advocate.

ASES ultimately agreed to Respondents' demand for higher reimbursement rates. ASES believed it had no choice but to acquiesce to Respondents' demands because of its concerns over access to nephrology services for Mi Salud patients. On June 13, 2012, ASES abandoned the new reimbursement formula and reinstated the 20 percent COB. The requirement that payers reimburse providers the full 20 percent COB, retroactive to March 16, 2012, is estimated to cost ASES and the Mi Salud program an additional \$4 million to \$6 million annually. Thus, the denial of nephrology services and the demands for higher reimbursement rates caused substantial harm to the consumers of Puerto Rico.

Finally, the proposed complaint alleges that Respondents' actions were a naked agreement to fix prices and a collective refusal to deal, not related to any efficiency-enhancing justification or any efforts at clinical or financial integration. Respondents, at all times relevant to the proposed complaint, maintained separate, independent nephrology practices and made no attempt to share the financial risk in the provision of nephrology services or to clinically integrate the delivery of care to patients, which might justify the otherwise illegal joint activity.

The Proposed Consent Order

The proposed consent order is designed to prevent the continuance and recurrence of the illegal conduct alleged in the proposed complaint, while not prohibiting the Respondents to engage in legitimate joint conduct in the future, if they so choose.

Paragraph II of the proposed consent order prevents Respondents from continuing the challenged conduct. In particular, Paragraph II.A prevents Respondents from entering into or participating in agreements: (1) to negotiate on behalf of another physician with any payer, (2) to refuse to deal, or threaten to refuse to deal with any payer, or (3) regarding any term, condition, or requirement upon which another physician deals, or

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is willing to deal, with any payer, including, but not limited to, price terms.

The other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits Respondents from exchanging information with another physician concerning whether and on what terms that other physician is willing to contract with a payer. Paragraph II.C prevents Respondents from entering into agreements to withhold services from any person. Paragraph II.D bars Respondents from exchanging information among physicians concerning any physician's willingness to offer or withhold services from any person. Paragraph II.E prohibits attempts to engage in the actions precluded by Paragraphs II.A, II.B, II.C, or II.D. Paragraph II.F proscribes encouraging or attempting to induce any action that would be prohibited by Paragraph II. Nothing in Paragraph II prohibits any agreement or conduct among Respondents that is reasonably necessary to a Qualified Arrangement.

Paragraph III requires Respondents to provide the Commission with notice and certain information before entering into a Qualified Arrangement. Paragraph III.A requires Respondents to notify the Commission 60 days prior to entering into any Qualified Arrangement. Paragraph III.B requires Respondents to provide information about the nature and effects of the proposed agreement as part of the Paragraph III.A notification. Paragraph III.C allows the Commission to make a written request for additional information within 60 days, which then prevents the participating Respondents from entering into the proposed agreement until 30 days after substantially complying with the request for additional information. Paragraphs III.D through F state that certain actions with respect to a proposed Qualified Arrangement should not be construed as a determination by the Commission that the action violates the law, is approved, or violates this order.

Paragraph IV is similarly designed to prevent the challenged conduct from recurring by requiring Respondents to send copies of the complaint and consent order to those impacted by its terms. Paragraph IV.A requires each Respondent to send a copy of the complaint and consent order to every physician, officer, manager,

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and staff member in each Respondent's medical practice group at any time since January 1, 2010. Paragraph IV.A also requires each Respondent to send a copy of the complaint and consent order to every payer whom Respondent had contacted regarding contracting for physician services at any time since January 1, 2010. Paragraph IV.B carries the provisions in Paragraph IV.A forward for three years from the date of the order.

Paragraphs V, VI, and VII impose various obligations on Respondents to report or to provide access to information to the Commission to facilitate Respondents' compliance with the consent order. Finally, Paragraph VIII provides that the proposed consent order will expire 20 years from the date it is issued.

Initial Decision

IN THE MATTER OF

McWANE, INC.**AND****STAR PIPE PRODUCTS, LTD.**INITIAL DECISION IN REGARD TO ALLEGED VIOLATIONS OF SEC. 5
OF THE FEDERAL TRADE COMMISSION ACT*Docket No. 9351; File No. 101 0080*
Complaint, June 4, 2012 – Initial Decision, May 1, 2013

In January 2012, the Commission issued an administrative complaint against respondents McWane, Inc. (“McWane”) and Star Pipe Products, Ltd. (“Star Pipe”), alleging that McWane and Star Pipe, along with their competitor Sigma Corporation, conspired in 2008 to raise and stabilize prices for imported ductile iron pipe fittings (“DIPF”) and to maintain a monopoly in the market for domestic DIPF. Ductile iron pipe fittings are used in water distribution systems for the installation of valves, water meters, and hydrants, and to change the flow of water. The complaint alleged seven counts of violating Section 5 of the FTC Act, including restraint of trade, unfair methods of competition, conspiracy to monopolize, monopolization, and attempted monopolization. Prior to issuing its complaint, the Commission entered a separate consent agreement settling charges against Sigma Corporation. After the complaint issued, respondent Star Pipe also entered into a consent agreement with the Commission, resolving the Commission’s competitive concerns.

Following an administrative trial, Administrative Law Judge D. Michael Chappell issued an Initial Decision dismissing the first three counts of the complaint and upholding the remaining four counts. In dismissing the first three counts of the complaint, the court found the Commission failed to establish (1) that McWane illegally conspired with Sigma Corporation and Star Pipe to raise and stabilize prices for imported DIPF; (2) that McWane conspired with its competitors to exchange competitively sensitive sales information; and (3) that McWane invited competitors to collude on prices in the imported DIPF market. However, the court held that the preponderance of the evidence showed that McWane engaged in monopolistic practices, attempted to monopolize, engaged in a conspiracy to monopolize and engaged in an unreasonable restraint of trade with Sigma Corporation in the market for domestic DIPF. The court further found that the evidence supported the existence of a separate product market for domestic DIPF.

The court further issued an order requiring McWane to cease and desist from certain conduct within the DIPF market, including allocating or dividing DIPF markets; agreeing with competitors not to compete in the DIPF market; entering into certain types of exclusivity agreements; entering into certain retroactive customer sales incentives; and retaliating or discriminating against customers.