

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Timothy J. Muris, Chairman**
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary
Pamela Jones Harbour

In the Matter of

**TENET HEALTHCARE CORPORATION,
a corporation, and**

**FRYE REGIONAL MEDICAL CENTER, INC.,
a corporation.**

Docket No. C-

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of certain acts and practices of Tenet Healthcare Corporation (“Tenet”) and Frye Regional Medical Center, Inc. (“Frye”), hereinafter sometimes referred to as “Respondents,” and Respondents having been furnished thereafter with a copy of the draft of Complaint that counsel for the Commission proposed to present to the Commission for their consideration and which, if issued, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order to Cease and Desist (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the 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 Tenet is a for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Nevada, with its principal address at 3820 State Street, Santa Barbara, California 93105.
2. Respondent Frye is a for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of North Carolina, with its principal address at 420 North Center Street, Hickory, North Carolina 28601.
3. 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 Tenet” means Tenet Healthcare Corporation, its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- B. “Respondent Frye” means Frye Regional Medical Center, Inc., its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- C. “Piedmont Health Alliance” or “PHA” means the Piedmont Health Alliance, Inc., its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- D. “Hospital” means a health care facility licensed by any state as a hospital.
- E. “Medical group practice” means a bona fide, integrated firm in which physicians practice medicine together as partners, shareholders, owners, members, or employees, or in which only one physician practices medicine.

- F. “Participate” in an entity means (1) to be a partner, shareholder, owner, member, or employee of such entity, or (2) to provide services, agree to provide services, or offer to provide services to a payor through such entity. This definition applies to all tenses and forms of the word “participate,” including, but not limited to, “participating,” “participated,” and “participation.”
- G. “Payor” means any person that pays, or arranges for payment, for all or any part of any physician or hospital services for itself or for any other person. “Payor” includes any person that develops, leases, or sells access to networks of physicians or hospitals.
- H. “Person” means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.
- I. “Physician” means a doctor of allopathic medicine (“M.D.”) or a doctor of osteopathic medicine (“D.O.”).
- J. “Preexisting contract” means a contract that is in effect on the date this Order becomes final.
- 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, hospital services, or both physician and hospital services in which:
 - 1. all physicians and hospitals that participate in the arrangement participate in active and ongoing programs of the arrangement to evaluate and modify the practice patterns of, and create a high degree of interdependence and cooperation among, the physicians and hospitals that participate in the arrangement, in order to control costs and ensure the quality of services provided through the arrangement; and
 - 2. any agreement concerning price or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies through the arrangement.
- M. “Qualified risk-sharing joint arrangement” means an arrangement to provide physician services, hospital services, or both physician and hospital services in which:
 - 1. all physicians and hospitals that participate in the arrangement share substantial financial risk through their participation in the arrangement and thereby create incentives for the physicians and hospitals that participate jointly to control costs

and improve quality by managing the provision of physician and hospital services, such as risk-sharing involving:

- a. the provision of physician or hospital services to payors at a capitated rate,
 - b. the provision of physician or hospital services for a predetermined percentage of premium or revenue from payors,
 - c. the use of significant financial incentives (*e.g.*, substantial withhold) for physicians or hospitals that participate to achieve, as a group, specified cost-containment goals, or
 - d. the provision of a complex or extended course of treatment that requires the substantial coordination of care by hospitals or physicians in different specialties offering a complementary mix of services, for a fixed, predetermined price, where the costs of that course of treatment for any individual patient can vary greatly due to the individual patient's condition, the choice, complexity, or length of treatment, or other factors; and
2. any agreement concerning price or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies through the arrangement.
- N. “Tenet physician PHA member” means any physician practicing in a medical group practice owned or controlled in any manner by Respondent Tenet or Respondent Frye, whose services are paid for pursuant to a preexisting contract between Piedmont Health Alliance and any payor, and for as long as such physician continues to receive payment pursuant to such contract.
- O. “Unifour area of North Carolina” means the North Carolina counties of Alexander, Burke, Caldwell, and Catawba.

II.

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

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

understanding between or among any physicians practicing in the Unifour area of North Carolina:

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

PROVIDED HOWEVER, that nothing in Paragraph II of this Order shall prohibit any agreement involving, or conduct by, Respondent Tenet or Respondent Frye that:

- (i) solely involves physicians employed by Respondent Tenet or Respondent Frye, or any physician to the extent he or she is providing services pursuant to a contract with Respondent Tenet or Respondent Frye; or
- (ii) is reasonably necessary to form, participate in, or take any action in furtherance of a qualified risk-sharing joint arrangement or a qualified clinically-integrated joint arrangement, so long as the arrangement does not restrict the ability, or facilitate the refusal, of physicians who participate in it to deal with payors on an individual basis or through any other arrangement.

III.

IT IS FURTHER ORDERED that Respondent Tenet shall assure that no Tenet physician PHA member, 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, submits claims for

payment pursuant to a preexisting contract between Piedmont Health Alliance and any payor, where such claims are for services provided at any time ninety (90) or more days after the date this Order becomes final; *provided, however,* that Respondent Tenet may permit any Tenet physician PHA member to continue to submit claims for payment pursuant to contracts listed in Confidential Appendix A of this Order.

IV.

IT IS FURTHER ORDERED that, for a period of four (4) years after the date this Order becomes final, Respondent Tenet and Respondent Frye, directly or indirectly, or through any corporate or other device, shall cease and desist from entering into any arrangement with any physicians pursuant to which Respondent Tenet or Respondent Frye acts as a messenger, or as an agent, for or on behalf of any physicians practicing in the Unifour area of North Carolina, with payors regarding contracts or terms of dealing involving the physicians and payors.

PROVIDED, HOWEVER, that, nothing in Paragraph IV of this Order shall prohibit any agreement involving, or conduct by, Respondent Tenet or Respondent Frye that solely involves physicians employed by Respondent Tenet or Respondent Frye, or any physician to the extent he or she is providing services pursuant to a contract with Respondent Tenet or Respondent Frye.

V.

IT IS FURTHER ORDERED that:

A. For five (5) years after the date this Order becomes final, pursuant to each qualified risk-sharing joint arrangement with any physician or each qualified clinically-integrated joint arrangement with any physician in which Respondent Frye is a participant (“Arrangement”), Respondent Tenet or Respondent Frye shall notify the Secretary of the Commission in writing (“Notification”) at least sixty (60) days prior to either Respondent’s contacting a payor, pursuant to an Arrangement to negotiate or enter into any agreement relating to price or other terms or conditions of dealing with any payor, on behalf of any physician or hospital in such Arrangement.

PROVIDED, HOWEVER, that Notification shall not be required for any Arrangement in which all the physician participants:

- (i) are employed only by Respondent Tenet, Respondent Frye, or Respondents Tenet and Frye; or
- (ii) are physicians who have contracted with Respondent Tenet or Respondent Frye, but only to the extent that the physician is providing services pursuant to that contract.

PROVIDED FURTHER, that Notification shall not be required for subsequent contacts with any payors pursuant to any Arrangement for which Notification has been given pursuant to this Paragraph V.A.

- B. With respect to any Arrangement, Respondent Tenet or Respondent Frye shall include the following information in the Notification:
1. the name, address, telephone number, medical specialty, and medical practice group, if applicable, of each physician participant, and the name of each hospital where he or she has privileges;
 2. the name and telephone number of the person responsible for each hospital participant's relationship with the Arrangement;
 3. a description of the Arrangement and its purpose, function, and geographic area of operation;
 4. a description of the nature and extent of the integration and the efficiencies resulting from the Arrangement;
 5. an explanation of how any agreement on prices (or on contract terms related to price) furthers the integration and achieves the efficiencies of the Arrangement;
 6. a description of any procedures proposed to be implemented to limit possible anticompetitive effects resulting from the Arrangement or its activities; and
 7. all studies, analyses, and reports that were prepared for the purpose of evaluating or analyzing competition for physician or hospital services in any area, including, but not limited to, the market share of physician services in any area or the market share of hospital services in any area.
- C. If, within sixty (60) days from the Commission's receipt of the Notification, a representative of the Commission makes a written request for additional information to Respondent Tenet or Respondent Frye, Respondent Tenet or Respondent Frye shall not engage in any conduct described in Paragraph V.A. of this Order prior to the expiration of thirty (30) days after substantially complying with such request for additional information, or such shorter waiting period as may be granted in writing from the Bureau of Competition. The expiration of any waiting period described herein without a request for additional information or without the initiation of an enforcement proceeding shall not be construed as a determination by the Commission or its staff that a violation of the law or of this Order may not have occurred. Further, receipt by the Commission from Respondent Tenet or Respondent Frye of any Notification of an Arrangement is not to be

construed as a determination by the Commission that any such Arrangement does or does not violate this Order or any law enforced by the Commission.

VI.

IT IS FURTHER ORDERED that:

- A. Respondent Tenet and Respondent Frye shall not challenge or interfere with any termination, required by a Commission order, of a contract between Piedmont Health Alliance and any payor, pursuant to which contract Respondent Frye receives payment for the provision of hospital, physician, or any other healthcare services.
- B. Within thirty (30) days after the date this Order becomes final, Respondent Tenet shall distribute by e-mail with return receipt requested, or by first-class mail with return receipt requested, a copy of this Order and the Complaint:
 - 1. to each officer who is at the level of senior vice-president or higher, each member of the board of directors, and each regional director of managed care of Respondent Tenet;
 - 2. to the chief executive officer, the chief financial officer, and each person having primary responsibility for managed care contracting of each hospital owned or controlled by Respondent Tenet, except for Respondent Frye; and
 - 3. to each officer, each member of the board of directors, and each person having primary responsibility for managed care contracting of Respondent Frye.
- C. Within thirty (30) days after the date this Order becomes final, Respondent Tenet shall distribute by first-class mail, return receipt requested, a copy of this Order and the Complaint to the chief executive officer of each payor with which Respondent Frye has a record of having been in contact since January 1, 1994, regarding contracting for the provision of hospital services or physician services.
- D. For a period of five (5) years after the date this Order becomes final, Respondent Tenet shall distribute by e-mail with return receipt requested, or by first-class mail with return receipt requested, a copy of this Order and the Complaint:
 - 1. to each officer who becomes a senior vice-president or higher, each member of the board of directors, and each regional director of managed care of Respondent Tenet, and who did not previously receive a copy of this Order and the Complaint, within ninety (90) days of the time that he or she assumes such responsibility;

2. to each person who becomes the chief executive officer, the chief financial officer, or a person having primary responsibility for managed care contracting of each hospital owned or controlled by Respondent Tenet, except for Respondent Frye, and who did not previously receive a copy of this Order and the Complaint; and
3. to each person who becomes an officer, a member of the board of directors, or a person having primary responsibility for managed care contracting of Respondent Frye within ninety (90) days of the time that he or she assumes such responsibility.

E. For a period of five (5) years after the date this Order becomes final, Respondent Tenet shall:

1. distribute by first-class mail, return receipt requested, a copy of this Order and the Complaint to each payor that contracts with Respondent Frye for the provision of hospital or physician services, and that did not previously receive a copy of this Order and the Complaint, within thirty (30) days of the time that such payor enters into such contract;
2. annually publish a copy of this Order and the Complaint in an official annual report or newsletter sent to all physicians employed by and hospitals owned by Respondent Tenet within the Unifour area of North Carolina, with such prominence as is given to regularly featured articles; and
3. cooperate with the Commission in any action related to this proceeding that the Commission may take against Piedmont Health Alliance or any physician who participates in Piedmont Health Alliance, by i) producing, at its own expense, information and documents in its or Respondent Frye's possession, custody, or control; ii) making its or Respondent Frye's representatives available to provide deposition or hearing testimony, as may be requested by any duly authorized representative of the Commission; and iii) making its or Respondent Frye's representatives available, upon reasonable notice, for interviews in person or by telephone with Commission staff. Nothing in this paragraph shall require the production of materials as to which Respondent Tenet or Respondent Frye may assert a valid claim of privilege on its own behalf or pursuant to the terms of any written joint defense agreement with any respondent in any Commission proceeding against Piedmont Health Alliance or any physician who participates in Piedmont Health Alliance.

F. Respondent Tenet shall file a verified written report within sixty (60) days after the date this Order becomes final, annually thereafter for five (5) 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 such report shall include:

1. a detailed description of the manner and form in which Respondent Tenet and Respondent Frye have complied and are complying with this Order;
2. the name, address, and telephone number of each payor with which Respondent Frye has had any contact related to contracting since this Order became final;
3. copies of the e-mail return receipts and signed postal return receipts required by Paragraphs VI.B through VI.E of this Order; and
4. a detailed description of any actions taken in furtherance of a qualified risk-sharing joint arrangement or a qualified clinically-integrated joint arrangement provided for in Paragraph II of this Order.

PROVIDED, HOWEVER, that, if Respondent Frye no longer is owned or controlled by Respondent Tenet, then Respondent Frye (rather than Respondent Tenet) shall have the obligation to comply with those provisions of Paragraphs VI.B through VI.F of this Order to the extent applicable to officers, members of the board of directors, other officials, or official reports or newsletters of Frye.

VII.

IT IS FURTHER ORDERED that each Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in it, such as dissolution, assignment, sale resulting in the emergence of a successor company or corporation, the creation or dissolution of subsidiaries, or any other change in Respondent Tenet or Respondent Frye that may affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that each Respondent shall notify the Commission of any change in its principal addresses 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, Respondent Tenet and Respondent Frye shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, calendars, and other records and documents in their possession, or under their control, relating to any matter contained in this Order;

- B. Upon five (5) days' notice to Respondent Tenet and Respondent Frye, and in the presence of counsel, and without restraint or interference from them, to interview officers, directors, or employees of Respondent Tenet and Respondent Frye.

X.

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

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED:

Confidential Appendix A

[REDACTED FROM PUBLIC RECORD VERSION]