

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
Terrell McSweeney

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In the Matter of)	
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Cooperativa de Médicos Oftalmólogos de Puerto Rico, a corporation.)	Docket No. C-4603
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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41, *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission (“Commission”), having reason to believe that Cooperativa de Médicos Oftalmólogos de Puerto Rico (“OFTACOOOP”), hereinafter referred to as “Respondent,” have violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint, stating its charges in that respect as follows:

NATURE OF THE CASE

1. This matter concerns an agreement among competing ophthalmologists to refuse to deal with a health plan that tried to establish a lower-cost provider network for its members who sought medical treatment for eye problems in the Commonwealth of Puerto Rico.
2. Respondent OFTACOOOP is a healthcare cooperative in Puerto Rico composed of about 100 member ophthalmologists. Respondent orchestrated an agreement among competing ophthalmologists not to deal with a health plan, MCS Advantage, Inc. (“MCS”), and its network administrator Eye Management of Puerto Rico (“Eye Management”). Respondent’s concerted refusal to deal succeeded. MCS had to abandon its plans to have Eye Management create a lower-cost network of ophthalmologists.
3. OFTACOOOP has not undertaken any efficiency-enhancing integration among its members sufficient to justify the challenged conduct.
4. The Respondent’s illegal conduct unreasonably restrained prices and other forms of competition among otherwise-independent ophthalmologists in Puerto Rico.

RESPONDENT

5. OFTACOOOP is a not-for-profit corporation organized, existing, and doing business as a cooperative under and by virtue of the laws of the Commonwealth of Puerto Rico with its principal address at 1250 Ponce de Leon Avenue, Suite #906, San Juan, Puerto Rico 00907. OFTACOOOP is a healthcare cooperative of composed of more than 50% of the physicians practicing ophthalmology throughout Puerto Rico.

JURISDICTION

6. OFTACOOOP is organized for the purpose of serving the interests of its members. OFTACOOOP exists and operates, and at all times relevant to this Complaint, has existed and operated, for the pecuniary benefits of its members.

7. At all times relevant herein, OFTACOOOP's members have provided ophthalmology services to people for a fee. Except to the extent that Respondent has restrained competition as alleged herein, OFTACOOOP's members have competed with one another to provide ophthalmology services to patients for a fee.

8. Respondent is a "corporation" within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

9. The acts and practices of Respondent, including the acts and practices alleged herein, are in commerce or affect commerce, as "Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, defines "commerce".

OVERVIEW OF CONTRACTING AMONG PHYSICIANS, PAYORS, AND NETWORK ADMINISTRATORS

10. Individual physicians and physician group practices, including ophthalmologists and ophthalmologist group practices, often contract with payors of healthcare services and benefits, including health insurers, managed care organizations, and others to establish the terms and conditions, including price and other competitively significant terms, under which they will provide services to the payors' enrollees.

11. Physicians entering into a payor contract often agree to discount or lower their reimbursement rates in exchange for access to additional patients made available by that payor's relationship with its subscribers. The contract with physicians may reduce the payor's costs and enable it to lower the price of health insurance and reduce patients' out-of-pocket medical care expenditures.

12. Absent anticompetitive agreements among them, otherwise-competing physicians unilaterally decide whether to contract with a payor to provide services to individuals covered by that payor's health plan(s), and what prices and other terms they will accept as payment for their services pursuant to such contracts.

13. In some instances, physicians and payors contract with network administrators. Network administrators provide various services to payors, including assembling provider panels, assuming financial risk, and offering administrative services such as credentialing, utilization management, and claims processing services. While many payors conduct these functions in-house, they may also contract with a network administrator to perform some or all of these services in exchange for a fee. These contracts with a network administrator may reduce payors' costs and may enable payors to lower the price of health insurance and reduce patients' out-of-pocket medical care expenses.

14. Physicians contracting with a network administrator often agree to discount or lower their reimbursement rates in exchange for access to additional patients made available by that network administrator's relationship with health-plan subscribers. These contracts with physicians may reduce a network administrator's costs and enable it to provide services to individuals covered by a payor's health plan at a lower cost than the health plan is able to provide on its own.

ANTICOMPETITIVE CONDUCT

Payor MCS Retained Network Administrator Eye Management to Help Lower Costs of Ophthalmology Services

15. MCS, a payor, provides healthcare services to enrollees of its Medicare Advantage plans pursuant to a contract with Medicare. Medicare pays MCS a premium; in exchange, MCS arranges and pays for healthcare services for its enrollees.

16. To participate in the Medicare Advantage program, MCS must offer a network with a sufficient number of physicians because the network must comply with the program's requirement of providing adequate access to healthcare services for its Medicare Advantage enrollees. In 2014, MCS therefore needed a certain number of ophthalmologists in its network to meet the program's requirement of adequate access.

17. As of April 2014, MCS contracted directly with approximately 200 ophthalmologists in Puerto Rico to provide ophthalmology services to its Medicare Advantage enrollees.

18. MCS sought to lower its costs after Medicare reduced the premiums it was paying to MCS. In April 2014, MCS asked Eye Management, a network administrator, to create and manage a network of ophthalmologists in Puerto Rico to help lower costs and better manage ophthalmology services provided to its Medicare Advantage enrollees. Eye Management is part of a group of privately owned, affiliated companies that create provider networks and offer credentialing, utilization management, and claims processing services in Puerto Rico, Florida, Georgia, and New Jersey to help improve the efficiency and reduce the costs of providing healthcare services to health-plan enrollees.

19. Under its arrangement with Eye Management, MCS would pay Eye Management a capitated rate (i.e., a set dollar amount per MCS enrollee per month) in exchange for Eye Management assuming financial and operational responsibility for managing ophthalmology services and benefits for MCS Medicare Advantage enrollees. Specifically, Eye Management

would enter into new contracts directly with ophthalmologists to replace MCS's existing contracts with each ophthalmologist. In addition, Eye Management would administer ophthalmology services and benefits provided to MCS enrollees, including credentialing, utilization review, claims processing, and other management services.

20. On or about June 4, 2014, MCS sent a letter to OFTACOOP members and other ophthalmologists in its network explaining its arrangement with Eye Management. On or about June 8, 2014, Eye Management sent a proposed contract to each ophthalmologist under which Eye Management offered to pay the ophthalmologist at rates that were about 10% lower, on average, than the rates under the existing contracts between MCS and each ophthalmologist.

Collective Refusal to Deal Defeated the Eye Management Network and Forced MCS to Maintain Higher Rates

21. In response to the letters from MCS and Eye Management, OFTACOOP convened a meeting on June 14, 2014. Under the leadership of OFTACOOP's president, a number of OFTACOOP member and non-member ophthalmologists, including a former secretary of the Board of Directors, attended the meeting. At the meeting, the ophthalmologists discussed their dissatisfaction with Eye Management and MCS, and their refusal to accept Eye Management's proposed contract.

22. The ophthalmologists who attended the meeting agreed not to sign new contracts with Eye Management in order to prevent Eye Management from creating the new network.

23. Within hours after the meeting, the former secretary of the Board, with the assistance of OFTACOOP's president, drafted and sent an email to more than 100 OFTACOOP member and non-member ophthalmologists with the subject line "**DO NOT SIGN THE MCS/EYE MANAGEMENT CONTRACT.**" The email was signed "**Board of Directors OFTACOOP**" and sent from the email account "oftacoop@gmail.com." The email informed the recipients that the ophthalmologists reached an agreement "**of NOT SIGNING the contract**" at the June 14, 2014 meeting and that they "**ALL NEEDED TO BE UNITED TO STOP THE TRAMPLING FROM THE MEDICAL PLANS.**" The email also urged the ophthalmologists not to sign the contract with Eye Management so they could collectively negotiate with payors through OFTACOOP.

24. Eye Management's medical director was one of the recipients of the email. Eye Management believed that OFTACOOP was directly interfering with Eye Management's plans to develop an ophthalmology network in Puerto Rico. In response, on June 19, 2014, Eye Management's counsel sent OFTACOOP a cease-and-desist letter urging OFTACOOP to stop interfering with negotiations between Eye Management and individual ophthalmologists. The letter also notified OFTACOOP that any agreement among competing ophthalmologists to jointly refuse to contract with Eye Management was illegal under the antitrust laws.

25. OFTACOOP next met on June 22, 2014. The stated purpose of that meeting, according to the June 14, 2014 email, was "to turn this around and for us to trample over MCS." At the meeting, OFTACOOP's president told the attendees they should make their own decisions. But he did not tell them that a collective refusal to deal with Eye Management violated

the antitrust laws. Indeed, despite the cease-and-desist letter from Eye Management, the former secretary of the Board told the attendees that they had to be united against Eye Management.

26. Respondent's efforts to unite the ophthalmologists against Eye Management had the desired effect. While some ophthalmologists initially told Eye Management they would sign a contract with Eye Management, the positive response quickly came to a halt after the June 14, 2014 OFTACOOP meeting and email. Some ophthalmologists told Eye Management that they would not accept the proposed contract until they received further instructions from OFTACOOP. Another ophthalmologist told Eye Management he would not sign the Eye Management contract because that was the agreement reached among OFTACOOP members and others. In the end, only a few ophthalmologists joined the Eye Management network. The final number of contracting ophthalmologists was well below what MCS needed in its network to meet network adequacy requirements under the Medicare Advantage program.

27. This was the first time Eye Management and its affiliates had encountered a widespread unwillingness by providers to join their networks. In fact, Eye Management and its affiliates have successfully created provider networks for at least six different medical specialties in several states, even when offering providers lower reimbursement than they had previously received under their contracts with health plans. In fact, the same year Eye Management was unable to contract with ophthalmologists because of Respondent's conduct, it successfully assembled a network of 350 optometrists in Puerto Rico.

28. The collective refusal to deal thwarted Eye Management's efforts to create a lower-cost network of ophthalmologists on behalf of MCS. In early August 2014, Eye Management informed MCS that it had been unable to form a viable network of ophthalmologists. MCS directed Eye Management to suspend further efforts to do so.

29. Having no choice but to abandon its cost-savings arrangement with Eye Management, MCS tried another approach to lower costs and better manage care. In early August 2014, MCS sent a letter to each ophthalmologist agreeing to continue contracting directly with the ophthalmologist. MCS informed the ophthalmologists that it would delegate only certain administrative functions to Eye Management. Faced with declining premium payments from the Medicare program to provide services to Medicare Advantage enrollees, MCS offered rates about 10% below the rates under its existing contracts with the ophthalmologists.

30. Just as they had rejected Eye Management's proposed contracts, many ophthalmologists refused to accept MCS's offer and cancelled, or threatened to cancel, their contracts with MCS. Out of approximately 200 contracted ophthalmologists, more than half cancelled their contracts with MCS between July 2014 and August 2014. Almost all of the ophthalmologists who sent cancellation letters were OFTACOOP members.

31. The contract cancellations jeopardized MCS's ability to include a sufficient number of ophthalmologists in its network needed to meet adequate access requirements for its Medicare Advantage enrollees. It also threatened to imperil patient care: MCS received hundreds of phone calls from its enrollees complaining that some ophthalmologists were either not offering appointments or cancelling previously scheduled surgeries.

32. With the ophthalmologists standing firm in their agreement not to participate in any lower-cost arrangement with MCS, MCS met with OFTACOOB's president, the former secretary of the Board, and other ophthalmologists to try to resolve the impasse. During a meeting in September 2014, the ophthalmologists made clear that OFTACOOB remained united in opposing MCS's efforts to contract at lower rates. MCS therefore had no choice but to abandon its plan to reduce rates and instead continued paying the higher rates to the ophthalmologists to retain its provider network for its Medicare Advantage members. Had MCS been able to lower the rates it paid to ophthalmologists, it may have been able to benefit consumers in two ways: (i) pass savings along to its members in the form of lower out-of-pocket medical expenditures, or (ii) refrain from potentially decreasing benefits or increasing out-of-pocket expenditures.

33. Through its concerted conduct, Respondent restrained competition by collectively refusing to deal with Eye Management and MCS. The purpose and effect of the concerted refusal to deal was to prevent Eye Management from creating a network of ophthalmologists on behalf of MCS and to defeat MCS's attempt to lower the costs of ophthalmology services provided to Medicare Advantage enrollees.

RESPONDENT'S CONDUCT IS NOT LEGALLY JUSTIFIED

34. Respondent's conduct described above has not been, and is not, reasonably related to achieving any efficiency-enhancing integration. Respondent has not undertaken any activities to create any integration among OFTACOOB members in their delivery of ophthalmology services and thus cannot justify the conduct described above.

ANTICOMPETITIVE EFFECTS

35. Respondent's actions described in paragraphs 23 through 34 have had the purpose and effect of unreasonably restraining trade and hindering competition in the provision of ophthalmology services in the Commonwealth of Puerto Rico in the following ways, among others:

- a. unreasonably restraining price and other forms of competition among ophthalmologists;
- b. increasing costs for ophthalmology services;
- c. depriving payors and individual consumers access to a lower-cost network of ophthalmologists; and
- d. depriving consumers of the benefits of competition among ophthalmologists.

VIOLATION CHARGED

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

. **WHEREFORE, THE PREMISES CONSIDERED,** the Federal Trade Commission on this twenty-seventh day of February, 2017, issues its Complaint against the Cooperativa de Médicos Oftalmólogos de Puerto Rico.

By the Commission.

Donald S. Clark
Secretary

SEAL: