

Bone and Joint Clinic of Baton Rouge, Inc. (“The Bone and Joint Clinic”), Baton Rouge Orthopaedic Clinic, L.L.C. (“Baton Rouge Orthopaedic Clinic”), and Orthopaedic Surgery Associates of Baton Rouge, L.L.C. (“Orthopaedic Surgery Associates”), hereinafter collectively referred to as “Respondents,” have violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges in that respect as follows:

NATURE OF THE CASE

1. This matter concerns a horizontal agreement among competing physicians to fix prices charged to United HealthCare of Louisiana, Inc. (“United HealthCare”), and to refuse to deal with United HealthCare except on terms to which the physicians collectively agreed. The physicians orchestrated this behavior with and through their independent practice association, Professional Orthopedic Services, and with and through their non-physician agent, Physician Network Consulting. Respondents’ conduct raised the price of orthopedic services in the Baton Rouge, Louisiana, area.

RESPONDENTS

2. Physician Network Consulting is a for-profit limited liability company, organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its principal address at 3900 N. Causeway Boulevard, Suite 1470, Metairie, LA 70002. Physician Network Consulting represents physicians in contract negotiations with health insurance firms and other third-party payors (“payors”). Physician Network Consulting’s client base includes physicians in approximately seven states.

3. Michael J. Taylor is the founder and managing director of Physician Network Consulting. His principal address is located at 3900 N. Causeway Boulevard, Suite 1470, Metairie, LA 70002. Mr. Taylor, operating through Physician Network Consulting, represents physicians in contract negotiations with payors.

4. Professional Orthopedic Services is a for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its principal address at 5408 Flanders Drive, Baton Rouge, LA 70808. Professional Orthopedic Services is an independent practice association consisting of approximately 28 physicians who practice orthopedic medicine. Its members provide approximately 70% of the orthopedic medicine services in the Baton Rouge, Louisiana, area.

5. The Bone and Joint Clinic is a for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its principal address at 7777

Hennessy Boulevard, Suite 7000, Baton Rouge, LA 70808. The Bone and Joint Clinic is a group practice consisting of approximately 10 physicians. These physicians practice orthopedic medicine for a fee in the Baton Rouge, Louisiana, area, and are members of Professional Orthopedic Services.

6. Baton Rouge Orthopaedic Clinic is a for-profit limited liability company, organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its principal address at 7443 Picardy Avenue, Baton Rouge, LA 70808. Baton Rouge Orthopaedic Clinic is a group practice consisting of approximately 15 physicians. These physicians practice orthopedic medicine for a fee in the Baton Rouge, Louisiana, area, and are members of Professional Orthopedic Services.

7. Orthopaedic Surgery Associates is a for-profit limited liability company, organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its principal address at 5408 Flanders Drive, Baton Rouge, LA 70808. Respondent Orthopaedic Surgery Associates includes, but is not limited to, Kenneth C. Cranor, M.D., Samuel C. Irwin, M.D., and Charles S. Walker, M.D. During the period of illegal conduct described in the Complaint, Orthopaedic Surgery Associates was a partnership among these three physicians. These physicians practice orthopedic medicine for a fee in the Baton Rouge, Louisiana, area, and are members of Professional Orthopedic Services.

THE FTC HAS JURISDICTION OVER RESPONDENTS

8. Respondents' general business practices, including the acts and practices herein alleged, are in or affecting "commerce" as defined in the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

OVERVIEW OF MARKET AND PHYSICIAN COMPETITION

9. The Bone and Joint Clinic, Baton Rouge Orthopaedic Clinic, and Orthopaedic Surgery Associates, through their shareholders, members, and other affiliated physicians, are engaged in the business of providing orthopedic services to patients in the Baton Rouge area. Except to the extent that competition has been restrained as alleged herein, The Bone and Joint Clinic, Baton Rouge Orthopaedic Clinic, and Orthopaedic Surgery Associates have been, and are now, in competition with each other for the provision of orthopedic services.

10. To be competitively marketable in the Baton Rouge area, a payor's health insurance plan must include in its physician network members of Professional Orthopedic Services, including physicians from at least The Bone and Joint Clinic or Baton Rouge Orthopaedic Clinic.

11. Physicians often contract with payors to establish the terms and conditions, including price terms, under which the physicians will render services to the payors' subscribers. Physicians entering into such contracts often agree to lower compensation to obtain access to additional patients made available by the payors' relationship with their subscribers. These contracts may reduce payors' costs, enable them to lower the price of health insurance, and reduce their subscribers' out-of-pocket medical care expenditures.

12. Absent agreements among competing physicians on the terms, including price, on which they will provide services to enrollees in payors' health care plans, competing physicians decide individually whether to enter into payor contracts to provide services to their subscribers or enrollees, and what prices they will accept pursuant to such contracts.

13. Medicare's Resource Based Relative Value System ("RBRVS") is a system used by the United States Centers for Medicare and Medicaid Services to determine the amount to pay physicians for the services they render to Medicare patients. The RBRVS approach provides a method to determine fees for specific services. In general, payors in the Baton Rouge, Louisiana, area make contract offers to individual physicians or groups at a price level specified as some percentage of the RBRVS fee for a particular year (*e.g.*, "110% of 2003 RBRVS" or "110% of 2003 Medicare").

14. Competing physicians sometimes use a "messenger" to facilitate the establishment of contracts between themselves and payors in ways that do not constitute or facilitate an unlawful agreement on prices and other competitively significant terms. Such a messenger may not, however, consistent with a competitive model, negotiate prices and other competitively significant terms on behalf of the participating physicians. Nor should a messenger facilitate the physicians' coordinated responses to contract offers by, for example, electing not to convey a payor's offer to them based on the messenger's opinion on the appropriateness, or lack thereof, of the offer.

RESPONDENTS CONSPIRED TO FIX THEIR PRICES TO UNITED HEALTHCARE

15. United HealthCare is a payor doing business in the Baton Rouge area. In 2001, the physicians in The Bone and Joint Clinic, Baton Rouge Orthopaedic Clinic, and Orthopaedic Surgery Associates were under contract with United HealthCare as network participants in United HealthCare's health plans. By letter dated June 29, 2001, United HealthCare notified these and other physicians of a new price schedule to take effect August 1, 2001, pursuant to United HealthCare's contract with its network of physicians in Louisiana. This price schedule would have paid network physicians an estimated 93% to 114% of 2001 RBRVS, depending on the medical procedures performed.

16. Physician Network Consulting coordinated the physicians' response to United HealthCare. On July 9, 2001, Michael J. Taylor of Physician Network Consulting held a conference

call with the business managers of The Bone and Joint Clinic, Baton Rouge Orthopaedic Clinic, and Orthopaedic Surgery Associates, during which the participants discussed jointly terminating their United HealthCare contracts in response to the new price schedule announcement. The same day, The Bone and Joint Clinic and the physicians in Orthopaedic Surgery Associates all sent letters to United HealthCare, terminating their respective United HealthCare contracts effective in 90 days, pursuant to the 90-day termination notice provision contained in the United HealthCare contract. The next day, Baton Rouge Orthopaedic Clinic also sent a letter to United HealthCare, terminating the contract. Thus, within 24 hours of their conference call with Michael Taylor, all the members of Professional Orthopedic Services terminated their United HealthCare contracts, to become effective in October 2001. On July 11, 2001, the business manager for The Bone and Joint Clinic sent a letter to Mr. Taylor, enclosing “information that you may find helpful in your negotiations on behalf of POS with United Healthcare,” including an “analysis of the proposed fee schedule.”

17. On July 19, 2001, Michael Taylor, in a broadcast fax to the same business managers, provided a form letter that he urged all of them to prepare and deliver to United HealthCare. The form letter advised United HealthCare that the signatory physicians had authorized Physician Network Consulting and its representative “to act as my agent regarding any contracting between United HealthCare and myself,” and told United HealthCare to contact Physician Network Consulting “to affect [sic] a prompt and equitable agreement” with the physicians. On July 23, 2001, The Bone and Joint Clinic and the physicians in Orthopaedic Surgery Associates transferred Mr. Taylor’s form letter onto their respective letterheads and sent them to United HealthCare. Two days later, Baton Rouge Orthopaedic Clinic did the same thing.

18. On July 24, 2001, and over the next two months, Physician Network Consulting negotiated with United HealthCare for higher payments for the Professional Orthopedic Services members. For example, on August 6, 2001, a Physician Network Consulting representative told United HealthCare in a letter that: “As we discussed during last week’s telephone conversation, [we] have been authorized by the member practices of Professional Orthopaedic [sic] Services, a messenger model IPA, to represent these practices in all fee schedule and contract negotiations with United.” The same letter asserted that the physicians required “130%-135% of 2001 Medicare in order to remain profitable” and that “no extension shall be granted” under the physicians’ termination notices unless United HealthCare agreed to pay them a higher price. The letter concluded by stating: “If [United HealthCare] wishes to maintain these orthopaedic practices in your panel, you should arrange your schedule to meet with me so that I can messenger your response to each practice.” Listed on the letter as blind-copy recipients were the business managers of The Bone and Joint Clinic, Baton Rouge Orthopaedic Clinic, and Orthopaedic Surgery Associates.

19. In September 2001, under the threat of impending contract termination, United HealthCare contacted The Bone and Joint Clinic and Baton Rouge Orthopaedic Clinic directly to attempt to negotiate contract terms with at least one of them. Both groups refused to deal directly and unilaterally with United HealthCare. Instead, they demanded that United HealthCare deal for their

services with Professional Orthopedic Services, and do so only through their common agent – Mr. Taylor and Physician Network Consulting.

20. On September 28, 2001, Mr. Taylor sent a letter to United HealthCare, in which he stated that he “messengered your last proposal” to The Bone and Joint Clinic and to Baton Rouge Orthopaedic Clinic but that “both groups have rejected” it, and further that “I believe both would favorably entertain” payment of “120% of Current Medicare” so long as “[t]his fee schedule would be available to all members of POS.” Mr. Taylor asserted in the letter that Professional Orthopedic Services “is a messenger IPA” yet gave copies of the letter – including its explicit statement of a price term for all the competing members of Professional Orthopedic Services – to the practice managers of The Bone and Joint Clinic and Baton Rouge Orthopaedic Clinic.

21. In response to Mr. Taylor’s demand, United HealthCare offered 120% of 2001 RBRVS to The Bone and Joint Clinic and Baton Rouge Orthopaedic Clinic, but made no contract offer to the physicians in Orthopaedic Surgery Associates. On October 3, 2001, Mr. Taylor told United HealthCare that he “messengered” this proposal to The Bone and Joint Clinic and to Baton Rouge Orthopaedic Clinic, but was “sorry to report they have declined your offer.” He continued: “However, the groups are countering a contract that is 125% of 2001 Medicare, and includes all members of the IPA. It is agreed that this will be an IPA contract and all members are to be included therein.”

22. On October 11, 2001, facing imminent contract termination by The Bone and Joint Clinic, Baton Rouge Orthopaedic Clinic, and Orthopaedic Surgery Associates, United HealthCare was coerced into accepting Mr. Taylor’s contract demands. Accordingly, United HealthCare agreed to a contract with all members of Professional Orthopedic Services, and to pay them 125% of 2001 RBRVS.

RESPONDENTS HAVE ENGAGED IN RESTRAINTS OF TRADE

23. The Bone and Joint Clinic, Baton Rouge Orthopaedic Clinic, and Orthopaedic Surgery Associates, acting as a combination of competing physicians through and with Professional Orthopedic Services, and in conspiracy with Physician Network Consulting and Mr. Taylor, have restrained competition by, among other things:

- a. facilitating, negotiating, entering into, and implementing agreements among themselves and Professional Orthopedic Services on price and other competitively significant terms;
- b. refusing to deal with United HealthCare except on collectively agreed-upon terms; and

- c. negotiating prices and other competitively significant terms in a contract with United HealthCare for themselves and Professional Orthopedic Services.

NO SIGNIFICANT EFFICIENCIES JUSTIFY RESPONDENTS' CONDUCT

24. Respondents' joint negotiation of fees and other competitively significant terms has not been, and is not, reasonably related to any efficiency-enhancing integration.

RESPONDENTS' ACTIONS HAVE HAD SUBSTANTIAL ANTICOMPETITIVE EFFECTS

25. Respondents' actions described in Paragraphs 16 through 23 of this Complaint have had, or have tended to have, the effect of restraining trade unreasonably and hindering competition in the provision of orthopedic services in the Baton Rouge area in the following ways, among others:

- a. price and other forms of competition among physician members of Professional Orthopedic Services were unreasonably restrained;
- b. prices for orthopedic services were increased; and
- c. health plans, employers, and individual consumers were deprived of the benefits of competition among physicians.

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

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this _____ day of _____, 2003, issues its Complaint against Respondents Physician Network Consulting, L.L.C., Michael J. Taylor, Professional Orthopedic Services, Inc., The Bone and Joint Clinic of Baton Rouge, Inc., Baton Rouge Orthopaedic Clinic, L.L.C., and Orthopaedic Surgery Associates of Baton Rouge, L.L.C.

By the Commission.

Donald S. Clark

Secretary

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