

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)	
)	
PHYSICIAN NETWORK)	
CONSULTING, L.L.C.,)	
a limited liability company,)	
)	
MICHAEL J. TAYLOR,)	
individually,)	
)	
PROFESSIONAL ORTHOPEDIC)	
SERVICES, INC.,)	
a corporation,)	
)	
THE BONE AND JOINT CLINIC OF)	Docket No. C-4094
BATON ROUGE, INC.,)	
a corporation,)	
)	
BATON ROUGE ORTHOPAEDIC)	
CLINIC, L.L.C.,)	
a limited liability company,)	
)	
and)	
)	
ORTHOPAEDIC SURGERY)	
ASSOCIATES OF)	
BATON ROUGE, L.L.C.,)	
a limited liability company.)	
_____)	

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of certain acts and practices of Physician Network Consulting, L.L.C. (“Physician Network Consulting”), Michael J. Taylor, Professional Orthopedic Services, Inc. (“Professional Orthopedic Services”), The 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,” and Respondents having been furnished thereafter with a copy of the draft of Complaint that counsel for the Commission proposed to present to the Commission for its consideration and which, if issued, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents (and, for Respondent Orthopaedic Surgery Associates, each physician member), 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 (or, for Respondent Orthopaedic Surgery Associates, each physician member) 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 (or, for Respondent Orthopaedic Surgery Associates, each physician member) 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 (or, for Respondent Orthopaedic Surgery Associates, each physician member) 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 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 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.
2. Respondent Michael J. Taylor is the founder and managing director of Physician Network Consulting. His principal address is 3900 N. Causeway Boulevard, Suite 1470, Metairie, LA 70002.
3. Respondent 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.
4. Respondent 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.

5. Respondent 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.
6. Respondent 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.
7. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents (and, for Respondent Orthopaedic Surgery Associates, each physician member), 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 Physician Network Consulting” means Physician Network Consulting, L.L.C., its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by Physician Network Consulting, L.L.C., and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- B. “Respondent Taylor” means Michael J. Taylor.
- C. “Respondent Professional Orthopedic Services” means Professional Orthopedic Services, Inc., its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by Professional Orthopedic Services, Inc., and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- D. “Respondent The Bone and Joint Clinic” means The Bone and Joint Clinic of Baton Rouge, Inc., its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by The Bone and Joint Clinic of Baton Rouge, Inc., and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- E. “Respondent Baton Rouge Orthopaedic Clinic” means Baton Rouge Orthopaedic Clinic, L.L.C., its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by Baton Rouge Orthopaedic Clinic, L.L.C., and the respective officers, directors, employees,

agents, attorneys, representatives, successors, and assigns of each.

- F. “Respondent Orthopaedic Surgery Associates” means Orthopaedic Surgery Associates of Baton Rouge, L.L.C., its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by Orthopaedic Surgery Associates of Baton Rouge, L.L.C., and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each. 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.
- G. “Respondent Physician Practices” means Respondent The Bone and Joint Clinic, Respondent Baton Rouge Orthopaedic Clinic, and Respondent Orthopaedic Surgery Associates.
- H. “Respondents” means Respondent Physician Network Consulting, Respondent Taylor, Respondent Professional Orthopedic Services, and Respondent Physician Practices.
- I. “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.
- J. “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.”
- K. “Payor” means any person that pays, or arranges for the payment, for all or any part of any physician services for itself or for any other person. Payor includes any person that develops, leases, or sells access to networks of physicians.
- L. “Person” means both natural persons and artificial persons, including, but not limited to, corporations, limited liability companies, unincorporated entities, and governments.
- M. “Physician” means a doctor of allopathic medicine (“M.D.”) or a doctor of osteopathic medicine (“D.O.”).
- N. “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.
- O. “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 arrangement is reasonably necessary to obtain significant efficiencies through the joint arrangement.
- P. “Qualified risk-sharing joint arrangement” means an arrangement to provide physician services in which:
1. all physicians who participate in the arrangement share substantial financial risk through their participation in the arrangement and thereby create incentives for the physicians who participate jointly to control costs and improve quality by managing the provision of physician services, such as risk-sharing involving:
 - a. the provision of physician services to payors at a capitated rate,
 - b. the provision of physician services for a predetermined percentage of premium or revenue from payors,
 - c. the use of significant financial incentives (*e.g.*, substantial withholds) for physicians who participate to achieve, as a group, specified cost-containment goals, or
 - d. the provision of a complex or extended course of treatment that requires the substantial coordination of care by physicians in different specialties offering a complementary mix of services, for a fixed, predetermined price, 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 joint arrangement.

II.

IT IS FURTHER ORDERED that Respondents, 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, as amended, 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:
 - 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 Respondent Professional Orthopedic Services;
- B. Exchanging or facilitating in any manner the exchange or transfer of information among physicians concerning any physician’s willingness to deal with a payor, or the terms or conditions, including price terms, on which the physician is willing to deal with a payor;
- C. Attempting to engage in any action prohibited by 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 this Paragraph II shall prohibit any agreement involving, or conduct by:

- (i) Respondent Physician Network Consulting or Respondent Taylor, subject to the provisions of Paragraph IV below, that is reasonably necessary to form, participate in, or take any action in furtherance of a qualified risk-sharing joint arrangement or qualified clinically-integrated joint arrangement, or that solely involves physicians in the same medical group practice;
- (ii) Respondent Professional Orthopedic Services that is reasonably necessary to form, participate in, or take any action in furtherance of a qualified risk-sharing joint arrangement or qualified clinically-integrated joint arrangement, and 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; or

- (iii) A Respondent Physician Practice that is reasonably necessary to form, participate in, or take any action in furtherance of a qualified risk-sharing joint arrangement or qualified clinically-integrated joint arrangement, or that solely involves physicians in the same medical group practice.

III.

IT IS FURTHER ORDERED that Respondent Physician Network Consulting and Respondent Taylor, for three (3) years from the date that this Order becomes final, 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. Negotiating with any payor on behalf of Respondent Professional Orthopedic Services, or any Respondent Physician Practice, notwithstanding whether such conduct also is prohibited by Paragraph II of this Order; and
- B. Advising any physician who participates, or has participated, in Respondent Professional Orthopedic Services, or any Respondent Physician Practice, to accept or reject any term, condition, or requirement of dealing with any payor, notwithstanding whether such conduct also is prohibited by Paragraph II of this Order.

IV.

IT IS FURTHER ORDERED that, for three (3) years from the date this Order becomes final, Respondent Physician Network Consulting and Respondent Taylor shall notify the Secretary of the Commission in writing (“Notification”) at least sixty (60) days prior to entering into any arrangement with any physicians under which Respondent Physician Network Consulting or Respondent Taylor would act as a messenger, or as an agent on behalf of any physicians, with payors regarding contracts. The Notification shall include the identity of each proposed physician participant; the proposed geographic area in which the proposed arrangement will operate; a copy of any proposed physician participation agreement; a description of the proposed arrangement’s purpose and function; a description of any resulting efficiencies expected to be obtained through the arrangement; and a description of procedures to be implemented to limit possible anticompetitive effects, such as those prohibited by this Order. Notification is not required for Respondent Physician Network Consulting’s or Respondent Taylor’s subsequent acts as a messenger pursuant to an arrangement for which this Notification has been given. Receipt by the Commission from Respondent Physician Network Consulting or Respondent Taylor of any Notification, pursuant to this Paragraph IV, is not to be construed as a determination by the Commission that any action described in such Notification does or does not violate this Order or any law enforced by the Commission.

V.

IT IS FURTHER ORDERED that Respondent Professional Orthopedic Services shall:

- A. Within thirty (30) days after the date on which this Order becomes final, send by first-class mail, with delivery confirmation, a copy of this Order and the Complaint to:
 1. each physician who participates, or has participated, in Respondent Professional Orthopedic Services; and
 2. each officer, director, manager, and employee of Respondent Professional Orthopedic Services;
- B. For three (3) years after the date this Order becomes final:
 1. Distribute by first-class mail, return receipt requested, a copy of this Order and the Complaint to:
 - a. each physician who begins participating in Respondent Professional Orthopedic Services, and who did not previously receive a copy of this Order and the Complaint from Respondent Professional Orthopedic Services, within thirty (30) days of the time that such participation begins;
 - b. each payor that contracts with Respondent Professional Orthopedic Services for the provision of physician services, within thirty (30) days of the time that such payor enters into such contract, excluding arrangements entered into pursuant to a qualified clinically-integrated joint arrangement or a qualified risk-sharing joint arrangement;
 - c. each person who becomes an officer, director, manager, or employee of Respondent Professional Orthopedic Services, and who did not previously receive a copy of this Order and the Complaint from Respondent Professional Orthopedic Services, within thirty (30) days of the time that he or she assumes such responsibility with Respondent Professional Orthopedic Services; and
 2. Annually publish a copy of this Order and the Complaint in an official annual report or newsletter sent to all physicians who participate in Respondent Professional Orthopedic Services, with such prominence as is given to regularly featured articles;
- C. Notify the Commission at least thirty (30) days prior to any proposed change in Respondent Professional Orthopedic Services, 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 Professional Orthopedic Services that may affect compliance obligations arising out of this Order; and

- D. File verified written reports within sixty (60) days after the date this Order becomes final, annually thereafter for three (3) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may by written notice require. Each report shall include:
1. a detailed description of the manner and form in which Respondent Professional Orthopedic Services has complied and is complying with this Order;
 2. the name, address, and telephone number of each payor with which Respondent Professional Orthopedic Services has had any contact; and
 3. copies of the delivery confirmations and return receipts required by Paragraphs V.A and V.B.

VI.

IT IS FURTHER ORDERED that, within thirty (30) days after the date on which this Order becomes final, Respondent Physician Network Consulting shall send a copy of this Order and the Complaint by first-class mail:

- A. With delivery confirmation, to each physician who participates, or has participated, in a physician group represented by Respondent Physician Network Consulting since January 1, 1999, excluding physicians being represented only to provide services pursuant to a qualified clinically-integrated joint arrangement or a qualified risk-sharing joint arrangement;
- B. With return receipt requested, to each present and past employee of Respondent Physician Network Consulting, and to each individual who has acted as a contractor for Respondent Physician Network Consulting (1) relating to contracting, or seeking to contract, with payors for the provision of physician services, or (2) relating to advising physicians with regard to their dealings with payors in connection with the provision of physician services; and
- C. With delivery confirmation, to each payor with which Respondent Physician Network Consulting deals or has dealt since January 1, 1999, for the purpose of contracting, or seeking to contract, while representing or advising any physician or group of physicians relating to contracting with such payor for the provision of physician services, excluding contracting only for the provision of physician services provided pursuant to a qualified clinically-integrated joint arrangement or a qualified risk-sharing joint arrangement.

VII.

IT IS FURTHER ORDERED that Respondent Physician Network Consulting shall:

- A. For three (3) years after the date this Order becomes final, distribute a copy of this Order and the Complaint:
 - 1. by first-class mail, with delivery confirmation, to all physicians, excluding any physicians only involved in a medical group practice, that Respondent Physician Network Consulting represents relating to contracting, or seeking to contract, with payors for the provision of physician services, or that Respondent Physician Network Consulting advises relating to providing payors with physician services, within (30) days of the time that Respondent Physician Network Consulting begins providing such representation or advice;
 - 2. by first-class mail, with delivery confirmation, to each payor with which Respondent Physician Network Consulting deals for the purpose of contracting, or seeking to contract, while representing or advising any physician or group of physicians relating to contracting with such payor for the provision of physician services, excluding contracts only for the provision of physician services provided by a medical group practice, within thirty (30) days of such dealing; and
- B. File verified written reports within sixty (60) days after the date this Order becomes final, annually thereafter for three (3) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may by written notice require. Each report shall include:
 - 1. a detailed description of the manner and form in which Respondent Physician Network Consulting has complied and is complying with this Order;
 - 2. the name, address, and telephone number of each physician that Respondent Physician Network Consulting has represented or advised with respect to his or her dealings with any payor in connection with the provision of physician services, excluding those physician services provided pursuant to a qualified clinically-integrated joint arrangement or a qualified risk-sharing joint arrangement;
 - 3. the name, address, and telephone number of each payor with which Respondent Physician Network Consulting has dealt while representing any physicians in connection with the provision of physician services, excluding those represented pursuant to a qualified clinically-integrated joint arrangement or a qualified risk-sharing joint arrangement;

4. copies of the delivery confirmations and return receipts required by Paragraphs VI and VII.A; and
- C. Notify the Commission at least thirty (30) days prior to any proposed change in Respondent Physician Network Consulting, such as dissolution, assignment, sale resulting in the emergence of a successor company or corporation, or the creation or dissolution of subsidiaries or any other change in Respondent Physician Network Consulting that may affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that, if Respondent Physician Network Consulting fails to comply with all or any portion of Paragraphs IV, VI, VII.A.2, VII.B, or VII.C of this Order within sixty (60) days of the time set forth in those paragraphs, then Respondent Taylor shall, within thirty (30) days thereafter, comply with those portions of Paragraphs IV, VI, VII.A.2, VII.B, or VII.C of this Order with which Respondent Physician Network Consulting did not comply.

IX.

IT IS FURTHER ORDERED that each Respondent Physician Practice (and, for Respondent Orthopaedic Surgery Associates, each physician member) shall:

- A. Within thirty (30) days after the date on which this Order becomes final, send by first-class mail, return receipt requested, copies of this Order, the Complaint, and the notice specified in Appendix A to this Order, to the Vice President of Network Management for United HealthCare of Louisiana, Inc. ("United HealthCare"); and
- B. Terminate, without penalty or charge, and in compliance with any applicable laws, any contract with United HealthCare upon receipt of a written request to terminate such contract from United HealthCare.

X.

IT IS FURTHER ORDERED that each Respondent shall notify the Commission of any change in his, her, or its respective principal address within twenty (20) days of such change in address.

XI.

IT IS FURTHER ORDERED that, for the purpose of determining or securing

compliance with this Order, each Respondent 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 its possession, or under its control, relating to any matter contained in this Order; and
- B. Upon five (5) days' notice to such Respondent, and in the presence of counsel, and without restraint or interference from it, to interview such Respondent or the officers, directors, and employees of such Respondent.

XII.

IT IS FURTHER ORDERED that this Order shall terminate on August 27, 2023.

By the Commission, Commissioner Harbour not participating.

Donald S. Clark
Secretary

SEAL
ISSUED: August 27, 2003

Appendix A.

[letterhead of Respondent sending letter]

[date]

[name],
Vice President of Network Management
United HealthCare of Louisiana, Inc.
3838 North Causeway Boulevard
Metairie, Louisiana 70002

Dear [name]:

Enclosed is a copy of a complaint and a consent order issued by the Federal Trade Commission against Physician Network Consulting, L.L.C., and others.

Pursuant to Paragraph IX of the enclosed consent order, [Respondent] must allow you to terminate, upon your written request, without any penalty or charge, any contracts with [Respondent] that were in effect prior to your receipt of this letter.

Any request to terminate the contract should be made in writing, and sent to me at the following address: [Respondent's address].

Sincerely,

[Respondent]