



Bureau of Competition

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

April 5, 2005

Richard A. Feinstein, Esq.  
Boies, Schiller & Flexner LLP  
5301 Wisconsin Avenue, NW  
Washington, DC 20015-2015

Re: *In the Matter of California Pacific Medical Group, Inc.*, Docket No. D-9306

Dear Mr. Feinstein:

On December 2, 2004, you submitted, on behalf of your client California Pacific Medical Group, d/b/a Brown & Toland Medical Group ("Brown & Toland"), the notice required by Paragraph IV(A) of the Consent Order ("Order") in the above-referenced matter. Specifically, Brown & Toland must notify the Commission and provide specified information sixty days prior to contacting any payor to negotiate contracts on behalf of network physicians with regard to any proposed clinically-integrated joint arrangement. You represent that Brown & Toland has formed such an arrangement ("PPO product"), and it now would like to begin to negotiate contracts with payors on behalf of its PPO network physicians. The December 2 submission provides the information specifically required by Paragraph IV(B), and refers as well to the initial description of the proposed PPO product that you submitted on June 17, 2004, and an additional submission, dated October 7, 2004, provided in response to questions staff posed related to Brown & Toland's initial notification.

The Commission's staff made a request for further information, as provided by Paragraph IV(C), on February 4, 2005.<sup>1</sup> The Order requires Brown & Toland to refrain from contacting any payor prior to the expiration of thirty days after substantially complying with that request, unless that period is shortened by the Commission's Bureau of Competition.

We have received and reviewed Brown & Toland's response to the request for additional information and have determined, based on all the information produced by Brown & Toland, including any representations you have made, that we will not recommend that the Commission take any action regarding Brown & Toland's PPO product at this time.

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<sup>1</sup> On January 29, 2005, Brown & Toland agreed to extend the time for receiving a request for additional information, from January 31, 2005, the expiration of the sixty day waiting period, until February 4, 2005, at which time Brown & Toland received that request.

Although important steps have been taken, it appears that Brown & Toland's proposed integration plan is not fully operational at this time. We plan, therefore, to review closely Brown & Toland's compliance with the Order, as it implements the PPO product and undertakes any joint contract negotiations for that product, to assure that such implementation ultimately supports the need for joint negotiations. As part of that review, we request that Brown & Toland submit, 180 days from the date it begins to negotiate with payors for its PPO product as well as with its required annual compliance reports, those documents related to PPO physician service utilization review and enforcement of guidelines/protocols and benchmarks, as described at pages 7 through 13 of Brown & Toland's June 17, 2004 submission. Unless otherwise agreed to, that information should be provided as requested in the attachment to this letter.

Your submissions do not constitute a request for advice, either from the Commission or from the Commission's staff. Accordingly, and as provided by Paragraph IV(C) of the Order, Brown & Toland may not construe from the Commission's receipt of Brown & Toland's notification, or from the Commission's failure to initiate an enforcement proceeding, that the Commission has determined that subsequent negotiations would not violate any provision of the Order, or otherwise would not violate any law that the Commission enforces. The Commission will not be precluded from instituting appropriate action should it subsequently appear that the information provided is inaccurate or incomplete. In addition, the Commission may at any time reconsider or rescind its determination should it subsequently appear that such information is inaccurate or incomplete, or if Brown & Toland has taken action in violation of the terms of the Order, or of any law the Commission enforces. We shall, of course, timely notify Brown & Toland if, at any time in the future, we determine, upon compliance review or otherwise, that Brown & Toland's PPO product, or its behavior in marketing that product to payors, raise concerns either under the Order or under any law that the Commission enforces.

Sincerely,

Daniel P. Ducore  
Assistant Director

David R. Pender  
Acting Assistant Director

Attachment

## Document and Data Request

1. All analyses of services provided by Brown & Toland PPO network physicians, as discussed at pages 9-12 of its June 17, 2004 submission, including, but not limited to, analyses of PPO network physicians' utilization practices (e.g., measurements prepared by the Utilization Management Department referred to at page 9), analyses of physicians' care across practice areas, coding patterns, referral patterns of primary care physicians, whether a physician appears to be under-serving his or her patient population, trends in ancillary costs, comparisons of a physician's delivery of care for HMO patients to PPO patients, PPO utilization reports, PPO E&M reports, report cards that compare physician performance against benchmarks and guidelines/protocols.
2. All similar analyses of Brown & Toland HMO network physician services.
3. For each physician, separately for PPO and HMO services, provide data on utilization indicators tracked, including number of patients seen, referral practices, average cost per referral, PCP average cost per patient/average cost per episode of care, hospital length of stay, coding patterns, overall network evaluations, evaluations by specialty, evaluations by physician group practices, evaluations compared to protocols, evaluations by benchmarks and evaluations by peer groups. Provide the data set in Excel format (consistent with Brown & Toland's data submission of March 25, 2005) or other mutually agreeable electronic format. Each observation should contain fields for physician, specialty, HMO/PPO indicator, year, indicators (multiple).