

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman  
Julie Brill  
Maureen K. Ohlhausen  
Joshua D. Wright

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In the Matter of )  
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) )  
**PRÁXEDES E. ALVAREZ SANTIAGO, M.D.,** )  
an individual; )  
**DANIEL PÉREZ BRISEBOIS, M.D.,** )  
an individual; )  
**JORGE GRILLASCA PALOU, M.D.,** )  
an individual; )  
**RAFAEL GARCÍA NIEVES, M.D.,** ) C-4402  
an individual; )  
**FRANCIS M. VÁZQUEZ ROURA, M.D.,** )  
an individual; )  
**ANGEL B. RIVERA SANTOS, M.D.,** )  
an individual; )  
**COSME D. SANTOS TORRES, M.D.,** )  
an individual; and )  
**JUAN L. VILARÓ CHARDÓN, M.D.,** )  
an individual. )

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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 Respondents Práxedes E. Alvarez Santiago, M.D., Daniel Pérez Brisebois, M.D., Jorge Grillasca Palou, M.D., Rafael García Nieves, M.D., Francis M. Vázquez Roura, M.D., Angel B. Rivera Santos, M.D., Cosme D. Santos Torres, M.D., and Juan L. Vilaró Chardón, M.D., (“Respondents”) 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:

## I. NATURE OF THE CASE

1. This matter concerns an agreement among eight independent nephrologists in southwestern Puerto Rico to fix the prices and conditions under which they would participate in Mi Salud, the Commonwealth of Puerto Rico's Medicaid program for providing healthcare services to indigent residents. In furtherance of their conspiracy, Respondents collectively terminated their participation in the Mi Salud program in southwestern Puerto Rico after the program's regional administrator, Humana Health Plans of Puerto Rico, Inc. ("Humana") refused to accede to Respondents' demands to restore a cut in reimbursements for certain patients eligible for benefits under both Medicare and Mi Salud ("dual eligibles"). After Respondents terminated their service agreements with Humana, they refused to treat any of Humana's Mi Salud patients. As a result, Respondents have unreasonably restrained competition and engaged in unfair methods of competition in violation of the Federal Trade Commission Act.

## II. RESPONDENTS

2. Respondents are individuals licensed to practice medicine in the Commonwealth of Puerto Rico and engaged in the business of providing nephrology services to patients for a fee. They represent all of the nephrologists in the southwest region who participate in the Humana Mi Salud program and almost 90 percent of all nephrologists in the region. Their respective names and business addresses are:

- (1) Praxedes E. Alvarez Santiago, M.D., 2916 Avenue Emilio Fagot, Suite 1, Ponce, PR 00716-3611.
- (2) Daniel Pérez Brisebois, M.D., 3011 Avenue Emilio Fagot, Ponce, PR 00716.
- (3) Jorge Grillasca Palou, M.D., 302 Torre San Cristobal, Coto Laurel, PR 00780.
- (4) Rafael Garcia Nieves, M.D., 909 Avenue Tito Castro, Torre Medica San Lucas, Suite 723, Ponce, PR 00716.
- (5) Francis M. Vázquez Roura, M.D., 1203 Avenue Muñoz Rivero, Ponce, PR 00717-0634.
- (6) Angel B. Rivera Santos, M.D., Caribbean Medical Centre, Suite 202-2275, Ponce By-Pass, Ponce, PR 00731.
- (7) Cosme D. Santos Torres, M.D., 3011 Avenue Emilio Fagot, Ponce, PR 00716.
- (8) Juan L. Vilaró Chardón, M.D., Edificio Parra, Oficina 302, Ponce, PR 00731.

### **III. JURISDICTION AND INTERSTATE COMMERCE**

3. At all times relevant to this Complaint, Respondents have been engaged in the business of contracting with third parties for the provision of nephrology services to persons for a fee.

4. The general business practices of Respondents, including the acts and practices alleged herein, are in or affecting “commerce,” as defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

5. Except to the extent that competition has been restrained as alleged herein, Respondents have been, and are now, in competition with each other for the provision of nephrology services to persons for a fee.

6. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over Respondents, who are “persons” within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44, and the proceeding is in the public interest.

### **IV. BACKGROUND**

7. Certain government-sponsored healthcare programs contract with physicians, hospitals, and other providers of healthcare services in a geographic area to create a network of healthcare providers that have agreed to provide healthcare services to enrollees covered under these healthcare programs.

8. To become members of these programs’ provider networks, physicians often enter into contracts with the programs that establish the terms and conditions, including fees and other competitively significant terms, for providing healthcare services to enrollees covered by the government-sponsored healthcare programs. Physicians entering into such contracts often agree to reductions in their usual compensation in order to obtain access to additional patients made available to them by the programs’ coverage of their enrollees. Such reductions in physician fees may permit government-sponsored healthcare programs to reduce their costs and offer broader benefits coverage to their enrollees.

### **V. MI SALUD PROGRAM**

9. Puerto Rico’s Mi Salud program is administered by Administración de Seguros de Salud (“ASES”), a public corporation that is charged with ensuring that the more than 1.5 million indigent residents of Puerto Rico have access to a full complement of medical services. ASES determines the benefits Mi Salud members will receive. ASES contracts with two health plans, Humana and Triple-S, to facilitate the provision of medical services to Mi Salud members and payments to participating providers. Administration of the Mi Salud program takes place in eight regions in Puerto Rico. Humana administers and insures the program in three regions: the east, the southeast, and the southwest. Triple-S administers the program in the other five

regions.

10. In October 2010, the Mi Salud reimbursement program was modified for persons eligible for both Medicare and Medicaid (“dual eligibles”). Under the previous program, called La Reforma, providers received 100 percent of the Medicare established rate for dual eligibles. As the primary payer, Medicare paid 80 percent, and payers administering the Mi Salud program paid the remaining 20 percent coordination of benefits amount (“20 percent COB”). Under the Mi Salud program, providers no longer received a coordination of benefits amount for dual eligibles, except in rare circumstances. Thus, Respondents’ reimbursements were lower under Mi Salud than they had previously been under La Reforma.

11. In November and December of 2010, all participating providers, including Respondents, signed agreements with Humana that reflected the change in the reimbursement policy. For several months after entering into new agreements, Humana continued to reimburse Respondents at the 20 percent COB rate under the preexisting La Reforma policy. As a result Respondents received greater reimbursements than they were entitled to under the new reimbursement policy in their contracts with Humana. In May 2011, Humana began implementing the new reimbursement policy. Humana also began recovering overpayments made to providers, including Respondents, under the old formula by deducting the overpayments from current reimbursements.

## **VI. ANTICOMPETITIVE CONDUCT**

12. Respondents have acted collectively to restrain competition by engaging in conduct such as:

- (a) negotiating, entering into, and implementing agreements to fix the prices upon which they would contract with Humana; and
- (b) terminating their contracts with Humana and refusing to treat Humana patients enrolled in the Mi Salud program in response to Humana’s unwillingness to accede to Respondents’ price-related demands.

### **A. Joint Negotiations**

13. Respondents’ conduct unfolded in three phases. First, between October 2011 and March 2012, Respondents repeatedly pressed Humana for higher reimbursement rates and ultimately collectively terminated their participation in the Mi Salud program. Second, immediately after terminating their contracts with Humana, Respondents refused to treat Humana’s Mi Salud patients. Finally, ASES, concerned over access by Mi Salud patients to nephrology services in the southwest region, acquiesced to Respondents’ demands and retroactively reinstated the 20 percent COB reimbursement rate.

14. Respondents began pressing their case for the reinstatement of the higher reimbursement in an October 28, 2011 email to Humana. In that email, Respondent Jorge

Grillasca Palou, MD, wrote:

Under the present conditions, I can anticipate that I will not continue offering services to Humana patients if these [policies for payment for services to dual eligibles] are not modified. Please remember that the renal population requires our services to stay alive and in good health. I am legitimately concerned that service may be affected for patients that can **only** [emphasis in original] be attended by a nephrologist. Loosing [sic] nephrology services for your population may create a complicated and dangerous situation, especially for critical care patients in a hospital.

He requested that Humana “hold an urgent meeting with me and other colleagues that share the same concern.” Dr. Grillasca copied the other Respondents on the email.

15. On December 8, 2011, Humana met with two of the Respondents, Dr. Angel Rivera Santos and Dr. Daniel Perez Brisebois, to discuss the reimbursement policy. During the meeting they pressed Humana to pay the 20 percent COB, and Dr. Perez handed to Humana a proposed schedule of codes for which Respondents wanted rate increases.

16. On December 9, 2011, the day after the meeting, Respondent Dr. Rivera sent to Humana an email stating,

I understand as well that I have the right to receive the 20 percent that has been denied. It will depend on these issues if I decided to continue my professional relationship with Humana Mi Salud. Also remember that I am waiting for your response related to the newly proposed rates that were handed to you yesterday by my colleague Dr. Daniel Perez. I will expect your answer concerning these issues on or before December 16, 2011.

Dr. Rivera copied all of the other Respondents on the email.

17. In a separate email sent to Humana on December 9, 2011, Dr. Grillasca expressed his support for Dr. Rivera’s demand for the reinstatement of the 20 percent COB and implementation of Respondents’ proposed fee schedule. “I am echoing the expressions of my colleague Dr. Angel Rivera Santos. I hope we communicate early next week to solve the pending issues.” Dr. Grillasca copied all of the other Respondents on the email.

18. Hoping to avoid the possible loss of nephrology services for Mi Salud patients, ASES called a meeting of Respondents, Humana and others on February 16, 2012. ASES explained at that meeting that the new reimbursement formula was a government rule and would not be changed because the government had a very limited budget. Despite the ASES explanation, Respondents continued to jointly seek a rate increase. At the end of the meeting Respondents presented Humana a revised schedule of fees and codes for which they wanted increased payments.

19. Two weeks later Respondents again sent Humana a schedule of proposed fee increases and threatened to terminate their contracts with Humana if the payer did not agree to their price demands by March 1, 2012. Dr. Grillasca sent an email to Humana on February 28, 2012, stating,

[W]e sent you a proposal of revised rates so I can continue offering nephrology and dialysis services in the south of Puerto Rico . . . I am sending once again the proposed rates in this e-mail. If I do not receive an answer before March 1, 2012, I will think that you are no longer interested in my services and I shall rescind providing services to Humana Mi Salud patients effective March 1.

Dr. Grillasca copied all of the other Respondents on the email.

#### **B. Contract Termination and Refusal to Treat Humana Mi Salud Nephrology Patients**

20. When Humana failed to agree to their price demands by the March 1, 2012 deadline, Respondents carried out their joint threat to terminate their contracts with Humana. Between March 1 and March 5, 2012, each of the Respondents sent to Humana a virtually identical termination letter. Respondents terminated their contracts with Humana. Dr. Grillasca copied the other Respondents on his termination letter to Humana.

21. Respondents also collectively agreed to withhold nephrology services from Humana Mi Salud patients, despite provisions in their contracts with Humana requiring them to provide 120 days written notice before terminating their medical services. On at least two instances Respondents collectively refused to treat Humana's Mi Salud patients needing urgent nephrology services because of their dispute with Humana over reimbursement rates.

22. On March 13, 2011, a multi-specialty practice group near Ponce sent to the emergency room of a hospital in Ponce a patient needing admission because of critical renal failure. Dr. Grillasca told the hospital emergency room staff that none of the nephrologists were accepting Humana's Mi Salud patients because of a disagreement with Humana over rates. The patient's condition worsened, and because the hospital could not identify a nephrologist in the southwest region to provide medical services to the patient, it became necessary to transfer the patient to another hospital 74 miles away, in San Juan. An official from the practice group emailed Humana representatives regarding the situation, stating that, "the nephrologists in our region are not accepting the Mi Salud plan. According to Dr. Jorge Grillasca, this is due to a disagreement regarding rates. Meanwhile, the nephrology patients are suffering the consequences." The official asked for an evaluation of the situation as soon as possible, "since this problem could have greater consequences for nephrology patients."

23. On the same day, Respondents refused to treat a Humana Mi Salud patient admitted to another hospital in Ponce with a renal illness. The patient was pregnant, had a history of bronchial asthma, and needed nephrology services. According to the notes of the nurses and the unit coordinator, calls were made to all eight of the Respondents, but all said they did not accept Mi Salud patients. Hospital staff recommended transferring the patient to another hospital 67

miles away, but the family objected because of the distance.

24. Respondents eventually began treating patients again only after being ordered to do so by the Office of the Health Advocate, who determined that Respondents' immediate terminations violated the notice provision in their contracts and the continuation of services requirement in the Puerto Rico Patient's Bill of Rights and Responsibilities.

### **C. Resulting Increase in Reimbursement**

25. Respondents' refusal to treat Humana's Mi Salud patients forced ASES to ultimately accede to Respondents' demands for reinstatement of the policy requiring payment of the 20 percent COB. On June 13, 2012, ASES issued Circular Letter No. 12-0613, stating that retroactive to March 16, 2012, it would require insurers to pay the 20 percent COB to all healthcare providers, essentially abandoning the new reimbursement formula and adopting the reimbursement policy under La Reforma. ASES reinstated the 20 percent COB because it was concerned about lack of access to nephrology services for its Mi Salud members, and believed that it had no other choice but to accede to adopting the 20 percent COB reimbursement policy. ASES believes that reinstating this reimbursement will increase the annual costs of the Mi Salud program by between \$4 and \$6 million.

## **VII. NO LEGITIMATE JUSTIFICATION FOR THE CONDUCT**

26. Respondents' conduct is not reasonably related to achieving any efficiency-enhancing integration. Respondents have undertaken no activities to integrate their delivery of nephrology services and thus cannot justify the conduct described in the foregoing paragraphs. They neither shared financial risk in providing nephrology services nor clinically integrated their delivery of care to patients.

## **VIII. ANTICOMPETITIVE EFFECTS**

27. Respondents' actions have the purpose and had the effect of unreasonably restraining trade and hindering competition in the provision of nephrology services in the southwest region of Puerto Rico by:

- (a) depriving third-party payers and consumers of the benefits of such competition;
- (b) increasing prices of nephrology services to Mi Salud; and
- (c) collectively withholding treatment from Mi Salud patients, resulting in significant and real consequences to patients.

## **IX. VIOLATION OF THE FTC ACT**

28. The acts and practices described above constitute unfair methods of competition in or affecting commerce 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, are continuing and will continue or recur in the absence of the relief herein requested.

**WHEREFORE, THE PREMISES CONSIDERED**, the Federal Trade Commission has caused this Complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C., this first day of May, 2013.

By the Commission.

Donald S. Clark  
Secretary

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