

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

In the Matter of)	
)	
PRAXEDES E. ALVAREZ SANTIAGO, M.D.,)	
an individual;)	
DANIEL PÉREZ BRISEBOIS, M.D.,)	
an individual;)	
JORGE E. GRILLASCA PALOU, M.D.,)	
an individual;)	
RAFAEL GARCIA 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.)	

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of certain acts and practices of Praxedes E. Alvarez Santiago, M.D., Daniel Pérez Brisebois, M.D., Jorge Grillasca Palou, M.D., Rafael Garcia 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., hereinafter referred to as “Respondents,” and Respondents having been furnished thereafter with a copy of the draft 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, their attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order to Cease and Desist (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by any Respondent 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 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 a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comment filed by an interested person, 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 Praxedes E. Alvarez Santiago, M.D., is an individual licensed to practice medicine in the Commonwealth of Puerto Rico and engaged in the business of providing nephrology services to patients for a fee with a business address of 2916 Avenue Emilio Fagot, Suite 1, Ponce, PR 00716-3611.
2. Respondent Daniel Pérez Brisebois, M.D., is an individual licensed to practice medicine in the Commonwealth of Puerto Rico and engaged in the business of providing nephrology services to patients for a fee with a business address of 3011 Avenue Emilio Fagot, Ponce, PR 00716.
3. Respondent Jorge Grillasca Palou, M.D., is an individual licensed to practice medicine in the Commonwealth of Puerto Rico and engaged in the business of providing nephrology services to patients for a fee with a business address of 302 Torre San Cristobal, Coto Laurel, PR 00780.
4. Respondent Rafael Garcia Nieves, M.D., is an individual licensed to practice medicine in the Commonwealth of Puerto Rico and engaged in the business of providing nephrology services to patients for a fee with a business address of 909 Avenue Tito Castro, Torre Medica San Lucas, Suite 723, Ponce, PR 00716.
5. Respondent Francis M. Vázquez Roura, M.D., is an individual licensed to practice medicine in the Commonwealth of Puerto Rico and engaged in the business of providing nephrology services to patients for a fee with a business address of 1203 Avenue Muñoz Rivero, Ponce, PR 00717-0634.
6. Respondent Angel B. Rivera Santos, M.D., is an individual licensed to practice medicine in the Commonwealth of Puerto Rico and engaged in the business of providing nephrology services to patients for a fee with a business address of Caribbean Medical Centre, Suite 202-2275, Ponce By-Pass, Ponce, PR 00731.
7. Respondent Cosme D. Santos Torres, M.D., is an individual licensed to practice medicine in the Commonwealth of Puerto Rico and engaged in the business of providing nephrology services to patients for a fee with a business address of 3011 Avenue Emilio Fagot, Ponce, PR 00716.
8. Respondent Juan L. Vilaró Chardón, M.D., is an individual licensed to practice medicine in the Commonwealth of Puerto Rico and engaged in the business of providing nephrology services to patients for a fee with a business address of Edificio Parra, Oficina 302, Ponce, PR 00731.
9. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of the Respondents, 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. “Respondents” means the following individuals (both individually and collectively): Praxedes E. Alvarez Santiago, M.D.; Daniel Pérez Brisebois, M.D.; Jorge Grillasca Palou, M.D.; Rafael Garcia 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.
- B. “Commission” means the Federal Trade Commission.
- C. “Government Entity” means any Federal, state, local or non-U.S. government, or any court, legislature, government agency, or government commission, or any judicial or regulatory authority of any government.
- D. “Medical Group Practice” means a bona fide, integrated firm in which Physicians practice medicine together as partners, shareholders, owners, or employees, or in which only one Physician practices medicine.
- E. “Non-exclusive Arrangement” means an arrangement that does not restrict the ability of, or facilitate the refusal of, Physicians who Participate in it to deal with Payers on an individual basis or through any other arrangement.
- F. “Order Date” means the date this Decision and Order is issued by the Commission to become final and effective.
- G. “Participate” in an entity or an arrangement means:
 - 1. to be a partner, shareholder, owner, member, or employee of such entity or arrangement;
or
 - 2. to provide services, agree to provide services, or offer to provide services to a Payor through such entity or arrangement.

This definition applies to all tenses and forms of the word “participate,” including, but not limited to, “participating,” “participated,” and “participation.”
- H. “Payor” means any Person that pays, or arranges for payment, for all or any part of any Physician services for itself or for any other Person. The term “Payor” includes any Person that develops, leases, or sells access to networks of Physicians.
- I. “Person” means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, or other business or Government Entity, and any subsidiaries, divisions, groups or affiliates thereof.
- J. “Physician” means a doctor of allopathic medicine (“M.D.”) or a doctor of osteopathic medicine (“D.O.”).

- K. “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.
- L. “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 above-described arrangement is reasonably necessary to obtain significant efficiencies that result from such integration through the arrangement.
- M. “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 at a capitated rate;
 - b. the provision of Physician services for a predetermined percentage of premium or revenue from Payers;
 - 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, when 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 above-described arrangement is reasonably necessary to obtain significant efficiencies that result from such integration through the arrangement.
- N. “Qualified Arrangement” means a Qualified Clinically-Integrated Joint Arrangement or a Qualified Risk-Sharing Joint Arrangement.

II.

IT IS FURTHER ORDERED that each Respondent, 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. entering into, adhering to, Participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding:
 - 1. to negotiate on behalf of another Physician(s) with any Payor;
 - 2. to refuse to deal, or threaten to refuse to deal with any Payor; or
 - 3. regarding any term, condition, or requirement upon which another Physician(s) deals, or is willing to deal, with any Payor, including, but not limited to, price terms.
- B. exchanging or facilitating in any manner the exchange or transfer of information with another Physician(s) concerning that Physician’s willingness to deal with a Payor, or the terms or conditions, including price terms, on which that Physician(s) is willing to deal with a Payor;
- C. entering into, adhering to, Participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding between or among another Physician(s) to withhold Physician services from any Person;
- D. exchanging or facilitating in any manner the exchange or transfer of information among Physicians concerning any Physician’s willingness to offer or withhold Physician services from any Person;
- E. attempting to engage in any action prohibited by Paragraphs II.A, II.B., II.C. or II.D. of this Order; and
- F. encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any Person to engage in any action that would be prohibited by Paragraph II of this Order;

provided, however, that nothing in this Paragraph II shall prohibit any agreement or conduct between the Respondents that, subject to the requirements of Paragraphs III of this Order, is reasonably necessary to form, Participate in, or take any action in furtherance of, a Qualified Arrangement, so long as such Qualified Arrangement is a Non-exclusive Arrangement.

III.

IT IS FURTHER ORDERED that:

- A. For three (3) years from the date this Order becomes final, pursuant to each Qualified Arrangement in which any Respondent is a Participant, Respondent shall notify the Commission in writing (“Paragraph III Notification”) at least sixty (60) days prior to:

1. Participating in, organizing, or facilitating any discussion or understanding with or among any Physicians or Medical Group Practices in such Qualified Arrangement relating to price or other terms or conditions of dealing with any Payor; or
 2. contacting a Payor, pursuant to a Qualified Arrangement to negotiate or enter into any agreement concerning price or other terms or conditions of dealing with any Payor, on behalf of any Physician or Medical Group Practice in such Qualified Arrangement.
- B. The Paragraph III Notification shall include the following information regarding the Qualified Arrangement:
1. the total number of Physicians and the number of Physicians in each specialty Participating in the Qualified Arrangement;
 2. a description of the Qualified Arrangement, including its purpose and geographic area of operation;
 3. a description of the nature and extent of the integration and the efficiencies resulting from the Qualified Arrangement;
 4. an explanation of the relationship of any agreement on prices, or contract terms related to price, to furthering the integration and achieving the efficiencies of the Qualified Arrangement;
 5. a description of any procedures proposed to be implemented to limit possible anticompetitive effects resulting from the Qualified Arrangement or its activities; and
 6. all studies, analyses, and reports that were prepared for the purpose of evaluating or analyzing competition for Physician services in any relevant market, including, but not limited to, the market share of Physician services in any relevant market.
- C. If, within sixty (60) days from the Commission's receipt of the Paragraph III Notification, a representative of the Commission makes a written request to any Respondent for additional information, then Respondent shall not Participate in any arrangement described in the Respondent's Paragraph III Notification prior to the expiration of thirty (30) days after substantially complying with such request for additional information, or such shorter waiting period as may be granted in writing from the Bureau of Competition;
- D. The expiration of any waiting period described herein without a request for additional information, or without the initiation of an enforcement proceeding, shall not be construed as a determination by the Commission, or its staff, that the proposed Qualified Arrangement does or does not violate this Order or any law enforced by the Commission;
- E. The absence of notice that the proposed Qualified Arrangement has been rejected, regardless of a request for additional information, shall not be construed as a determination by the Commission, or its staff, that the proposed Qualified Arrangement has been approved;
- F. Receipt by the Commission of any Paragraph III Notification regarding Participation pursuant to a proposed Qualified Arrangement is not to be construed as a determination by the Commission that any such proposed Qualified Arrangement does or does not violate this Order or any law enforced by the Commission; and

- G. Paragraph III Notification shall not be required prior to Participating in any Qualified Arrangement for which Paragraph III Notification has previously been given and where any waiting period for the previously submitted notification pursuant to this Order has expired.

IV.

IT IS FURTHER ORDERED that each Respondent shall:

- A. Within thirty (30) days after the Order Date distribute a copy of this Order and the Complaint:
1. by (i) first-class mail with delivery confirmation, (ii) electronic mail with return receipt confirmation, or (iii) in-person delivery with a signed acknowledgment of receipt by the recipient, to:
 - a. every Physician who Participates, or has Participated, in Respondent's Medical Practice Group at any time since January 1, 2010; and
 - b. each current officer, director, manager, and employee of Respondent's Medical Group Practice;
 2. by first-class mail, return receipt requested to the highest-ranking executive (*e.g.*, chief executive officer) of each Payor with whom Respondent has a record of being in contact since January 1, 2010, regarding contracting for the provision of Physician services.
- B. For three (3) years from the Order Date distribute a copy of this Order and the Complaint:
1. by (i) first-class mail, return receipt requested, (ii) electronic mail with return receipt confirmation, or (iii) in-person delivery with a signed acknowledgment of receipt from the recipient, to:
 - a. each Physician who begins Participating in Respondent's Medical Group Practice, and who did not previously receive a copy of this Order and the Complaint from Respondents within thirty (30) days of the time that such Participation begins;
 - b. each Person who becomes an officer, director, manager, or employee of the Respondent's Medical Group Practice, and who did not previously receive a copy of this Order and the Complaint from Respondent, within thirty (30) days of the time that he or she assumes such position; and
 2. by first-class mail, return receipt requested, to the highest-ranking executive (*e.g.*, chief executive officer) of each Payor who contracts with Respondent for the provision of Physician services, and who did not previously receive a copy of this Order and the Complaint from Respondent, within thirty (30) days of the time that such Payor enters into such contract.

V.

IT IS FURTHER ORDERED that:

- A. Within sixty (60) days from the Order Date, each Respondent shall file a verified written report setting forth in detail the manner in which the Respondent intends to comply, is complying and has complied with the Order.
- B. One (1) year after the Order Date, annually thereafter for the next three (3) years on the anniversary of the Order Date, and at such other times as the Commission may by written notice require, each Respondent shall file a verified written report setting forth in detail the manner in which the Respondent intends to comply, is complying and has complied with the Order.
- C. Each of the above-described reports by a Respondent shall include, among other information that may be necessary:
 - 1. The name, address, and telephone number of each Payor with which Respondent has had any contact during the one (1) year period preceding the date for filing such report;
 - 2. Copies of the delivery confirmations obtained from the recipients by the Respondent in connection with the Respondent's distribution of the Order and Complaint as required by Paragraph IV.

VI.

IT IS FURTHER ORDERED that each Respondent shall notify the Commission of any change in Respondent's Principal Address within twenty (20) days of such change in address.

VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to any Respondent, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission, access, during office hours of Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession, or under the control, of Respondent relating to compliance with this Order, which copying services shall be provided by Respondent at Respondent's expense.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on May 1, 2033.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: May 1, 2013