

consentagreement@ftc.gov, as prescribed in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 11, 2003), on the World Wide Web, at <http://www.ftc.gov/os/2003/07/index.htm>. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box:

consentagreement@ftc.gov. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii).

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order with the Washington University Physician Network (WUPN). The agreement settles charges that

WUPN violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by orchestrating and implementing agreements among WUPN and its independent, community-based physician members ("community physicians"), and facilitating agreements among its community physicians and its Washington University School of Medicine full-time faculty physician members ("faculty physicians"), to fix prices and other terms on which they would deal with health plans, and to refuse to deal with such purchasers except on collectively-determined terms. The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify their terms in any way. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by WUPN that it violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

The Complaint Allegations

WUPN consists of 900 faculty physicians and 600 community physicians who provide health care services in St. Louis, Missouri and four neighboring counties ("the greater St. Louis area"). WUPN was established in 1993 to facilitate, among competing physicians, collective bargaining with health plans in order to obtain more favorable reimbursement rates and other "very favorable terms when compared to contracts entered into on an individual basis or through another organization."

WUPN is a not-for-profit corporation, and its sole legal member is Washington University ("WU"), also a non-profit entity. Section 4 of the FTC excludes certain types of non-profit corporations from its definition of entities under its jurisdiction. However, the Commission has jurisdiction over WUPN because WUPN's community physicians, who operate for profit, are "members" of WUPN due to their significant role in governing the organization. Also, WUPN provides substantial economic benefits for its community physician members,

who make up a minority of the membership but are granted a substantial role in WUPN to enhance their incomes and bargaining power.

WUPN is managed and controlled by a Board of Directors made up of 16 community physicians and 13 faculty physicians. Contracts with health plans are negotiated by representatives of WUPN's Management Committee, and progress of its negotiations is reported to WUPN's Board. The Committee recommends to the Board whether to accept or reject a payor's fee schedule, or whether to terminate or extend a payor's existing contract. The Board votes on the recommendation, which requires majority approval.

WUPN has successfully coerced a number of health plans to increase the fees they pay to WUPN members, and thereby raised the cost of medical care in the greater St. Louis area. As a result of the challenged actions of WUPN, consumers in the greater St. Louis area are deprived of the benefits of competition among physicians. By facilitating agreements among WUPN members to deal only on collectively-determined terms, and actual or threatened refusals to deal with health plans that would not meet those terms, WUPN has violated Section 5 of the FTC Act.

WUPN's collective negotiations with payors are not justified by any efficiency-enhancing integration among the community physicians, or among the community physicians and the faculty physicians.

The Proposed Consent Order

The proposed order is designed to prevent recurrence of the illegal conduct charged in the complaint, while allowing WUPN to engage in legitimate conduct that does not impair competition. It is similar to recent orders that the Commission has issued to settle charges that physician groups engaged in unlawful agreements to raise the fees they receive from health plans.

The proposed order's specific provisions are as follows:

Paragraph II.A prohibits WUPN from entering into or facilitating any agreement between or among any physicians: (1) To negotiate with payors on any physician's behalf; (2) to deal, refuse to deal, or threaten not to deal with payors; (3) on what terms to deal with any payor; or (4) not to deal individually with any payor, or not to deal with any payor through an arrangement other than WUPN.

Other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits WUPN from facilitating exchanges of information among