Hogan Marren, Ltd.

"Clinical Integration in Health Care: A Check-Up" Wrap-Up Session May 29, 2008

John P. Marren

jpm@hmltd.com

Hogan Marren, Ltd.

Chicago, Illinois

(312) 946-1800

What do we know about CI?

If Clinical Integration is defined as…

"… an active and ongoing program to evaluate and modify practice patterns by the network's physician participants and create a high degree of interdependence and cooperation among the physicians to control costs and ensure quality . . ."

… then we know at least three things:

What *do* we know?

First, CI is <u>not</u> "new."

- Several thousand IPAs and PHO's entered into capitated arrangements since the late seventies, and to survive they had to maintain:

"***. . . an active and ongoing program to evaluate and modify practice patterns by the network's physician participants and create a high degree of interdependence and cooperation among the physicians to control costs and ensure quality . . .***"

What *do* we know?

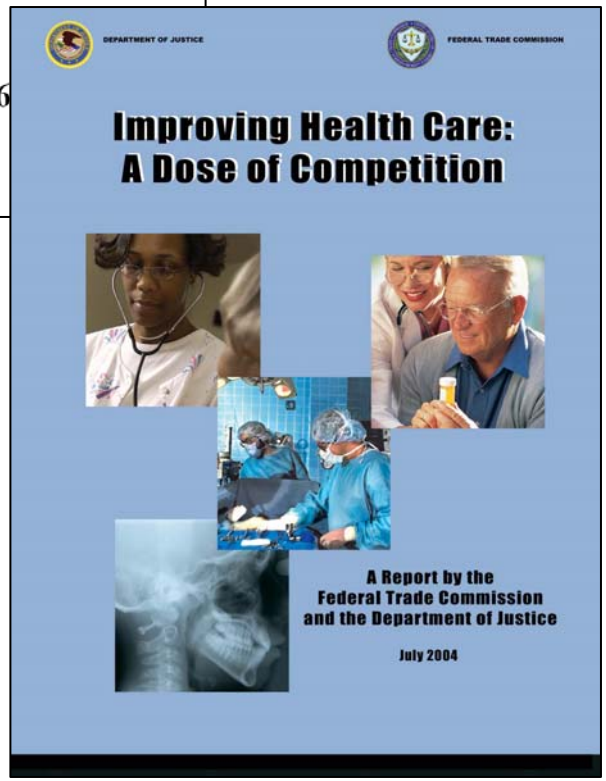
Second, the FTC has said *a lot* about Clinical Integration.

DEPARTMENT OF JUSTICE

Statements of Antitrust Enforcement Policy in Health Care

Issued by the
U.S. Department of Justice
and the
Federal Trade Commission

August 1996

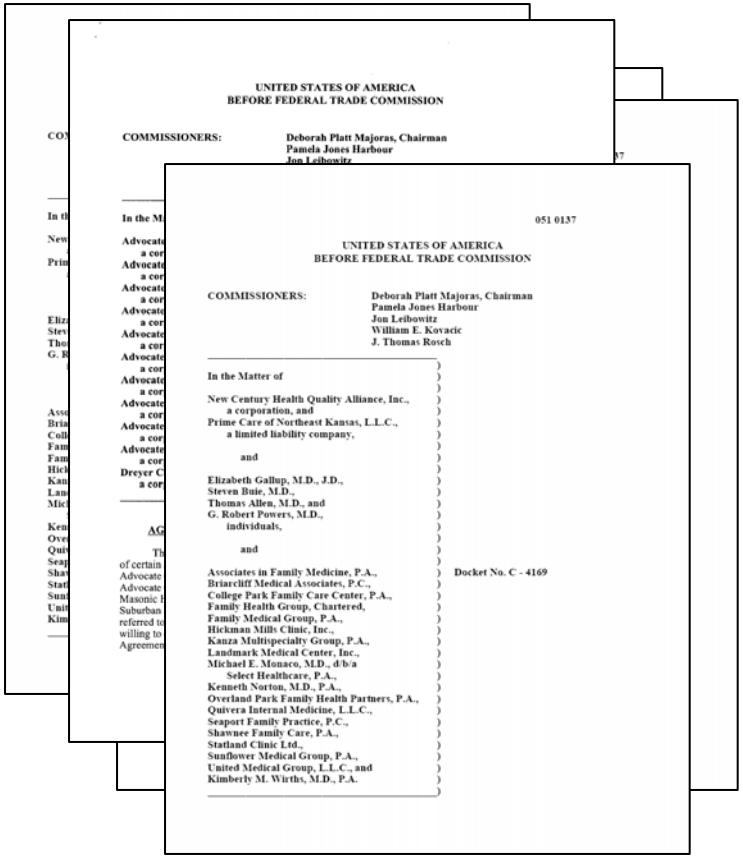


BROWN & TOLAND MEDICAL GROUP

Advocate Physician Partners

gripa health care could look like this™

MedSouth HEALTHCARE, P.C.



UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Deborah Platt Majoras, Chairman
Pamela Jones Harbour
Jon Leibowitz
William E. Kovacic
J. Thomas Rosch

051 0137

In the Matter of

New Century Health Quality Alliance, Inc., a corporation, and
Prime Care of Northeast Kansas, L.L.C., a limited liability company,

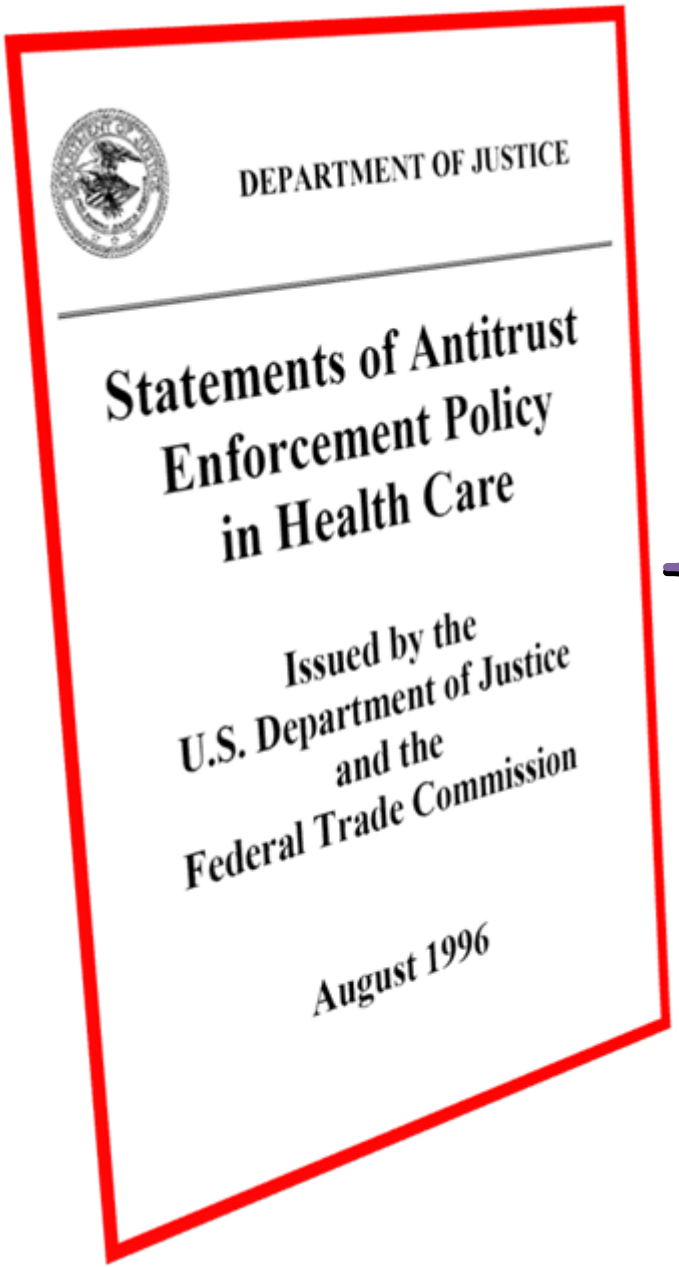
and

Elizabeth Gallup, M.D., J.D.,
Steven Buie, M.D.,
Thomas Allen, M.D., and
G. Robert Powers, M.D., individuals,

and

Associates in Family Medicine, P.A.,
Briarcliff Medical Associates, P.C.,
College Park Family Care Center, P.A.,
Family Health Group, Chartered,
Family Medical Group, P.A.,
Hickman Mills Clinic, Inc.,
Kanza Multispecialty Group, P.A.,
Landmark Medical Center, Inc.,
Michael E. Monaco, M.D., d/b/a Select Healthcare, P.A.,
Kenneth Norton, M.D., P.A.,
Overland Park Family Health Partners, P.A.,
Quivera Internal Medicine, L.L.C.,
Seaport Family Practice, P.C.,
Shawnee Family Care, P.A.,
Statland Clinic Ltd.,
Sunflower Medical Group, P.A.,
United Medical Group, L.L.C., and
Kimberly M. Wirths, M.D., P.A.

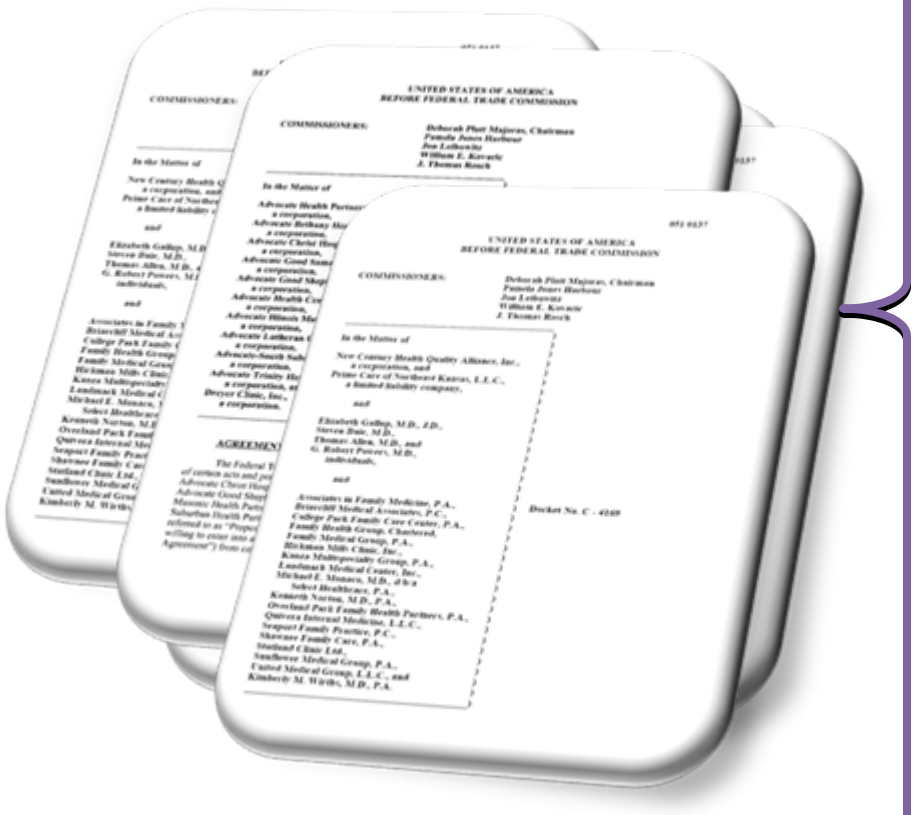
Docket No. C - 4169



"... an active and ongoing program to evaluate and modify practice patterns by the network's physician participants and create a high degree of interdependence and cooperation among the physicians to control costs and ensure quality.

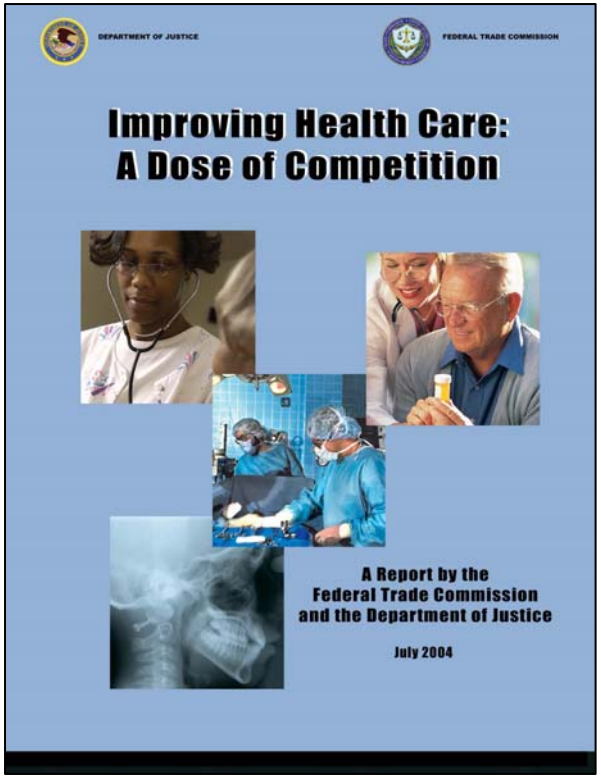
This program may include: (1) establishing mechanisms to monitor and control utilization of health care services that are designed to control costs and assure quality of care; (2) selectively choosing network physicians who are likely to further these efficiency objectives; and (3) the significant investment of capital, both monetary and human, in the necessary infrastructure and capability to realize the claimed efficiencies."

FTC Consent Decrees



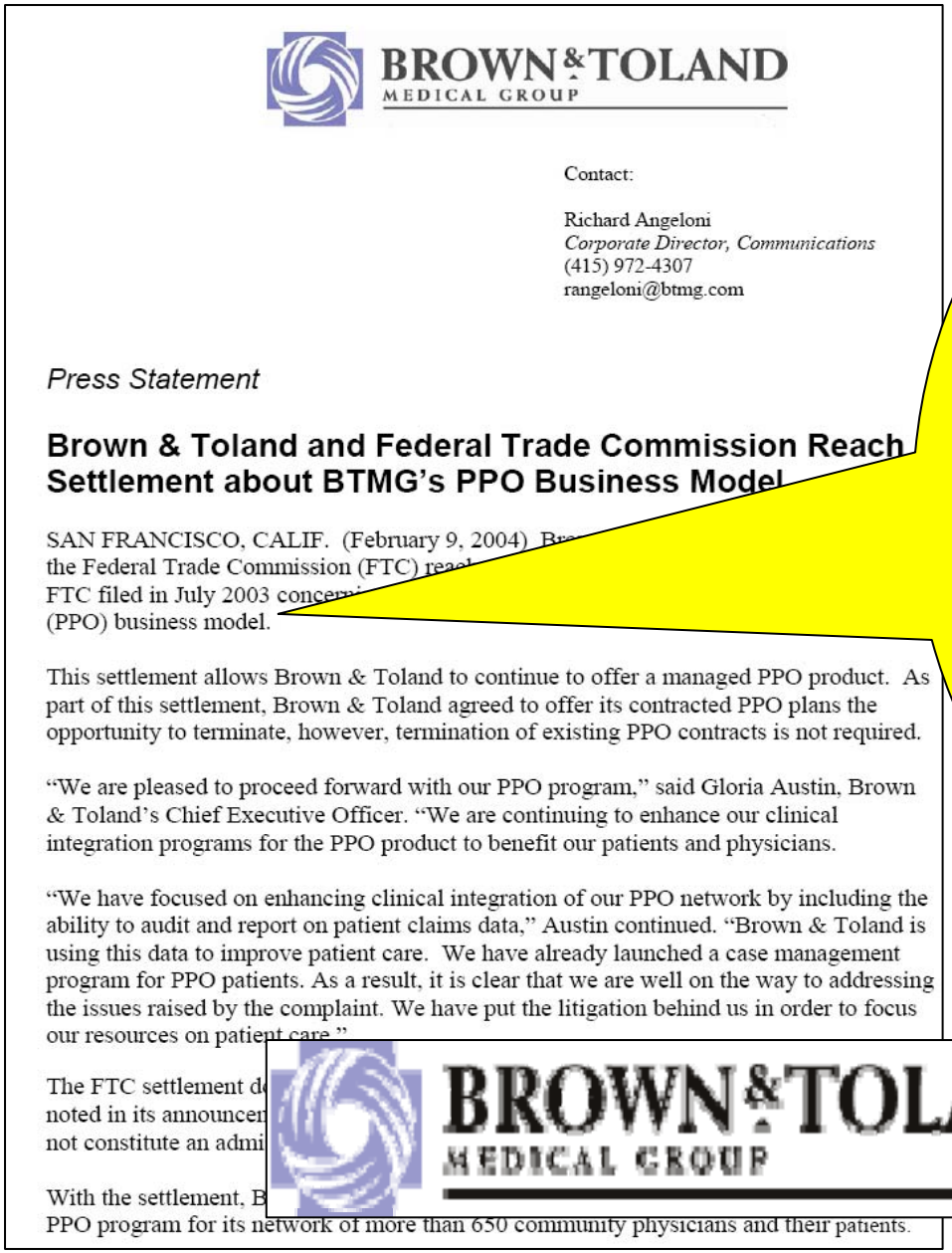
"…an arrangement to provide physician services in which:
1. all physicians who participate in the arrangement participate in active and ongoing programs of the arrangement to evaluate and modify the practice patterns of, and create a high degree of interdependence and cooperation among, these physicians, 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."

The FTC "due diligence" list



http://www.usdoj.gov/atr/public/health_care/204694/chapter2.htm#4b3

1. What do the physicians plan to do together from a clinical standpoint
2. How do the physicians expect actually to accomplish these goals?
3. What basis is there to think that the individual physicians will actually attempt to accomplish these goals?
4. What results can reasonably be expected from undertaking these goals?
5. How does joint contracting with payors contribute to accomplishing the program's clinical goals?
6. To accomplish the group's goals, is it necessary (or desirable) for physicians to affiliate exclusively with one IPA or can they effectively participate in multiple entities and continue to contract outside the group?
7. If rank-and-file docs were deposed, would they be able to describe the things your organization does to improve patient care



BROWN & TOLAND
MEDICAL GROUP

Contact:

Richard Angeloni
Corporate Director, Communications
(415) 972-4307
rangeloni@btmg.com

Press Statement

Brown & Toland and Federal Trade Commission Reach Settlement about BTMG's PPO Business Model

SAN FRANCISCO, CALIF. (February 9, 2004) Br
the Federal Trade Commission (FTC) reac
FTC filed in July 2003 concern
(PPO) business model.

This settlement allows Brown & Toland to continue to offer a managed PPO product. As part of this settlement, Brown & Toland agreed to offer its contracted PPO plans the opportunity to terminate, however, termination of existing PPO contracts is not required.

"We are pleased to proceed forward with our PPO program," said Gloria Austin, Brown & Toland's Chief Executive Officer. "We are continuing to enhance our clinical integration programs for the PPO product to benefit our patients and physicians.

"We have focused on enhancing clinical integration of our PPO network by including the ability to audit and report on patient claims data," Austin continued. "Brown & Toland is using this data to improve patient care. We have already launched a case management program for PPO patients. As a result, it is clear that we are well on the way to addressing the issues raised by the complaint. We have put the litigation behind us in order to focus our resources on patient care."

The FTC settlement d
noted in its announcer
not constitute an admi

With the settlement, B
PPO program for its network of more than 650 community physicians and their patients.

On February 9, 2004, the FTC and Brown & Toland reached a settlement **allowing Brown & Toland to continue** to offer a managed PPO product.

1661 Feehanville Dr. - Suite 200
Mount Prospect, Illinois 60056

Advocate Health Partners

January 2007

Dear AHP Physician Partner,

We are pleased to announce that in a consent decree, the Federal Trade Commission (FTC) has granted permission to Advocate Health Partners (AHP) to continue its innovative, integrated program to improve health outcomes for patients and lower the costs of health care. The FTC had been extensively reviewing Advocate Health Partners' *Clinical Integration Program* – a [illegible] that brings together 2,900 physicians to foster greater coordination and collaboration in the delivery o[illegible]

Bringing the FTC's four-year investigation to a close, AHP has entered i[illegible] that specifically allows its Clinical Integration Program to proceed, and gran[illegible] continue its collective contracting on behalf of its 2,900 physician members with[illegible] for-service health plans. It also upholds AHP's current Clinically Integrated contracts[illegible] Unicare, Great-West, HFN, the Advocate employee benefit plan and Blue Cross Blue Shi[illegible] the first time that the FTC has granted such permission to a physician organization already en[illegible] joint contracting on the basis of clinical integration

The FTC consent decree follows a recent favorable ruling by an arbitration panel that also upheld[illegible] Clinical Integration program in the face of private litigation by insurer United HealthCare.

The favorable agreement reached between the FTC and AHP is a significant victory for Advocate[illegible] supports our commitment to partner with our physicians and hospitals to achieve high quality, co[illegible] effective health care for individuals, families and communities. Over the next three years, AHP w[illegible] providing the FTC with information on the improved outcomes realized through the Clinical Integ[illegible] Program.

As required by the FTC, a copy of the consent decree will be provided to you at a later date. In the meantime, the attached Q&A should address any questions you may have regarding the outcome.

Sincerely,

Lee Sacks, M.D.
President, Advocate Health Partners

www.advocatehealth.com Related to[illegible]

On Dec. 29, 2006, the FTC concluded the investigation with a settlement that **permits AHP to continue** both its CI program and its collective contracting

Advocate Physician Partners

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

Bureau of Competition
Health Care Division

June 18, 2007

[redacted]quire
Ober, Kaler, Grimes & Shriver
1401 H Street, N.W., Suite 500
Washington, D.C. 20005-3324

Re: Follow-Up to 2002 MedSouth, Inc. Staff Advisory Opinion

Dear Mr. Miles:

By letter dated February 9, 2002, from then Bureau of Competition Assistant Director Je
Brennan to you as counsel for MedSouth, Inc., Commission staff issued an advisory opi
regarding MedSouth's proposed establishment and operation of a "clinically integrated"
physician network joint venture. MedSouth's proposed joint venture included contracti
payers on behalf of all of MedSouth's physician members on terms agreed upon by the
physicians, including the prices to be charged and paid for the physician services provic
pursuant to the contracts.

The staff advisory opinion letter concluded that the proposed program "appears to involv
integration among MedSouth physicians that has the potential to increase the quality and
the cost of medical care that the physicians provide to patients." The letter also stated th
staff had "concluded that the joint contracting appears to be sufficiently related to, an
reasonably necessary for, the achievement of the potential benefits to be regarded
the operation of the venture." Consequently, the staff concluded that the prop
including its price agreements, appropriately was subject to rule-of-reason
likely procompetitive and anticompetitive effects, rather than to *per se*
horizontal price-fixing arrangement among competing physicians.

Because staff could not predict with any degree of certainty h
practice, its actual number and categories of participating
in the area within which it planned to operate, the opin
MedSouth's proposed conduct under the rule of rea
expressed some concern that the potential MedS
capable of exercising market power, at least
Denver metropolitan area. Nevertheless,
creating procompetitive efficiencies th
absence of a sufficient basis for co
anticompetitive effects or exer
at that time that the Commission challenge the proposed progr
noted, however, that staff would "monitor MedSouth's activiti

"We see no reason at this time to rescind or modify the conclusions the staff reached in its February 19, 2002 advisory opinion letter concerning MedSouth's proposed operation at that time."

MedSouth
HEALTHCARE, P.C.

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

Bureau of Competition
Health Care Division

September 17, 2007

Christi J. Braun, Esquire
John J. Miles, Esquire
Ober, Kaler, Grimes & Shriver
1401 H Street, N.W., Suite 500
Washington, DC 20005-3324

Re: **Greater Rochester Independent Practice Association, Inc., Advisory**

Dear Ms. Braun and Mr. Miles:

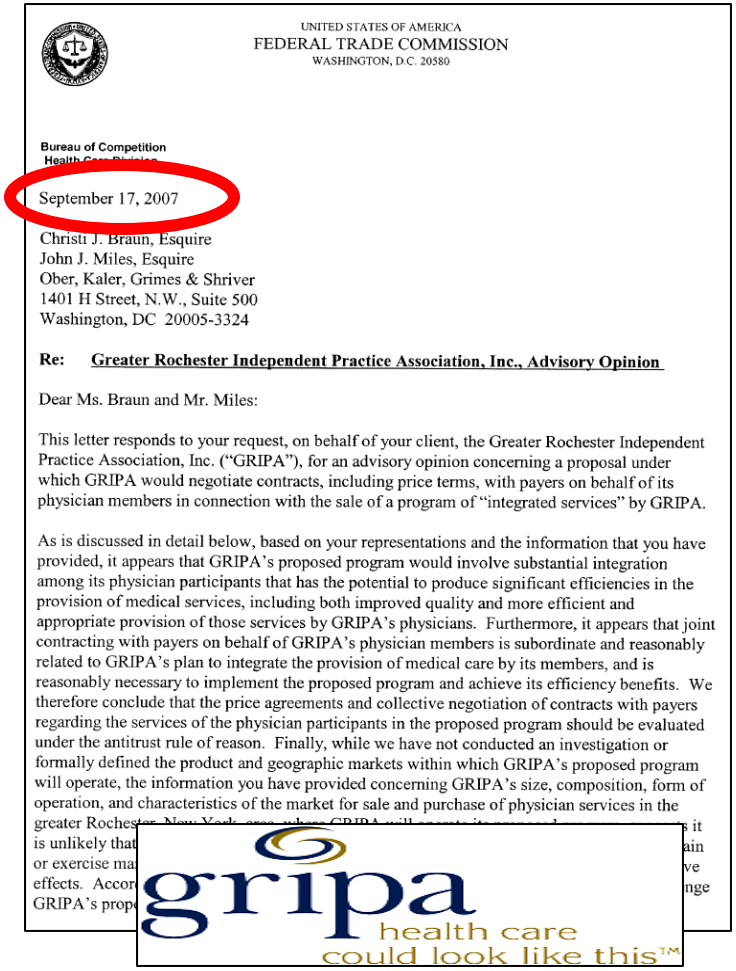
This letter responds to your request, on behalf of your client, the Greater Rochest
Practice Association, Inc. ("GRIPA"), for an advisory opinion concerning a propo
which GRIPA would negotiate contracts, including price terms, with payers on bel
physician members in connection with the sale of a program of "integrated services

As is discussed in detail below, based on your representations and the informati
provided, it appears that GRIPA's proposed program would involve substan
among its physician participants that has the potential to produce signifi
provision of medical services, including both improved quality and
appropriate provision of those services by GRIPA's physicians.
contracting with payers on behalf of GRIPA's physician mem
related to GRIPA's plan to integrate the provision of medi
reasonably necessary to implement the proposed prog
therefore conclude that the price agreements and
regarding the services of the physician particip
under the antitrust rule of reason. Finally,
formally defined the product and geogr
will operate, the information you have provided concerning GRIPA's size, composition, form of
operation, and characteristics of the market
greater Rochester, New York, area, where
is unlikely that GRIPA, or its physician me
or exercise market power, or that the propo
effects. Accordingly, we have no current in
GRIPA's proposed program if it proceeds to implement the program as described.

"...[W]e have no current intention to recommend that the Commission challenge GRIPA's proposed program if it proceeds to implement the program as described."

gripa
health care
could look like this™

- The FTC staff ... considered the **"explicit admission"** by GRIPA that **one objective of the plan was to contract at higher fee levels for the services of physician-members.**
- Ordinarily, such an objective would raise concerns that higher prices would result from the exercise of market power, the FTC staff said.
- "Here, however, GRIPA's higher fee levels are anticipated as **part of a program that seeks, and through the participants' integration appears to have significant potential to achieve, greater overall efficiency and improved quality** in the provision of medical care to covered persons."
- Based on the information provided, the FTC staff letter said, it appeared that GRIPA's joint negotiation of contracts, "including price terms with payers on behalf of its physician members who will be providing medical services to payers' enrollees under those contracts is subordinate to, **reasonably related to, and may be reasonably necessary for, or to further, GRIPA's ability to achieve the potential efficiencies** that appear likely to result from its member physicians' integration through the proposed program."



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

Bureau of Competition
Health Care Division

September 17, 2007

Christi J. Braun, Esquire
John J. Miles, Esquire
Ober, Kaler, Grimes & Shriver
1401 H Street, N.W., Suite 500
Washington, DC 20005-3324

Re: **Greater Rochester Independent Practice Association, Inc., Advisory Opinion**

Dear Ms. Braun and Mr. Miles:

This letter responds to your request, on behalf of your client, the Greater Rochester Independent Practice Association, Inc. ("GRIPA"), for an advisory opinion concerning a proposal under which GRIPA would negotiate contracts, including price terms, with payers on behalf of its physician members in connection with the sale of a program of "integrated services" by GRIPA.

As is discussed in detail below, based on your representations and the information that you have provided, it appears that GRIPA's proposed program would involve substantial integration among its physician participants that has the potential to produce significant efficiencies in the provision of medical services, including both improved quality and more efficient and appropriate provision of those services by GRIPA's physicians. Furthermore, it appears that joint contracting with payers on behalf of GRIPA's physician members is subordinate and reasonably related to GRIPA's plan to integrate the provision of medical care by its members, and is reasonably necessary to implement the proposed program and achieve its efficiency benefits. We therefore conclude that the price agreements and collective negotiation of contracts with payers regarding the services of the physician participants in the proposed program should be evaluated under the antitrust rule of reason. Finally, while we have not conducted an investigation or formally defined the product and geographic markets within which GRIPA's proposed program will operate, the information you have provided concerning GRIPA's size, composition, form of operation, and characteristics of the market for sale and purchase of physician services in the greater Roches

is unlikely that

or exercise ma

effects. Accor

GRIPA's prop

gripa
health care
could look like this™

What *else* do we know?

Third,

many lawful, well-constructed CI programs have and are being developed across the country . . .

So, you need to get going!

“Publicly known” examples

Other examples without national exposure

Example A
Community physician network
(~200 physicians)

AMBULATORY

- Data collection and Data Warehouse: Apply Evidence Based medicine protocols
- Patient communication and outreach for chronic disease management
- Physician education: quarterly roundtables
- Referral tracking initiative
- Formulary compliance and e-prescribing initiative
- EMR initiative
- IPA appointment/reappointment standards

INPATIENT

- Reduce avoidable days per physician
- Improve inpatient quality of care AMI
- Improve inpatient quality of care PNE
- Improve inpatient quality of care HF
- Improve efficiency: Preoperative scheduling
- Physician Participation in IT initiative
- Hospital quality indicators: mortality, infection and readmission rates

OTHER

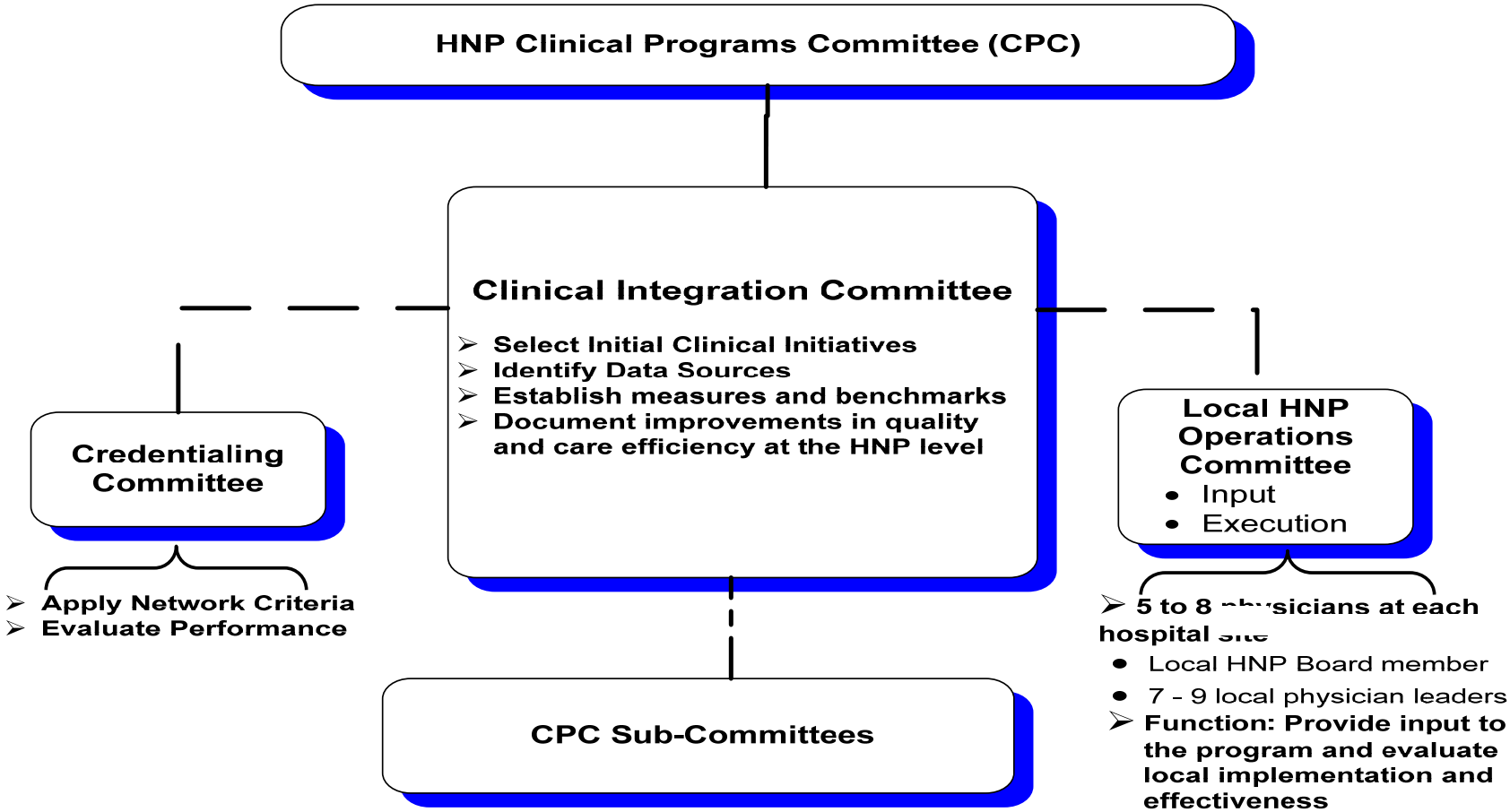
- IPA appointment/reappointment standards (Include significant inpatient cases in IPA peer review/appointment process)
- Physician participation in hospital programs: IT training for Care Manager, Physician Portal
- Physician participation in hospital programs: Physician Advisory Panel for IT

Example B
Community physician-hospital organization (1 hospital, ~120 physicians)

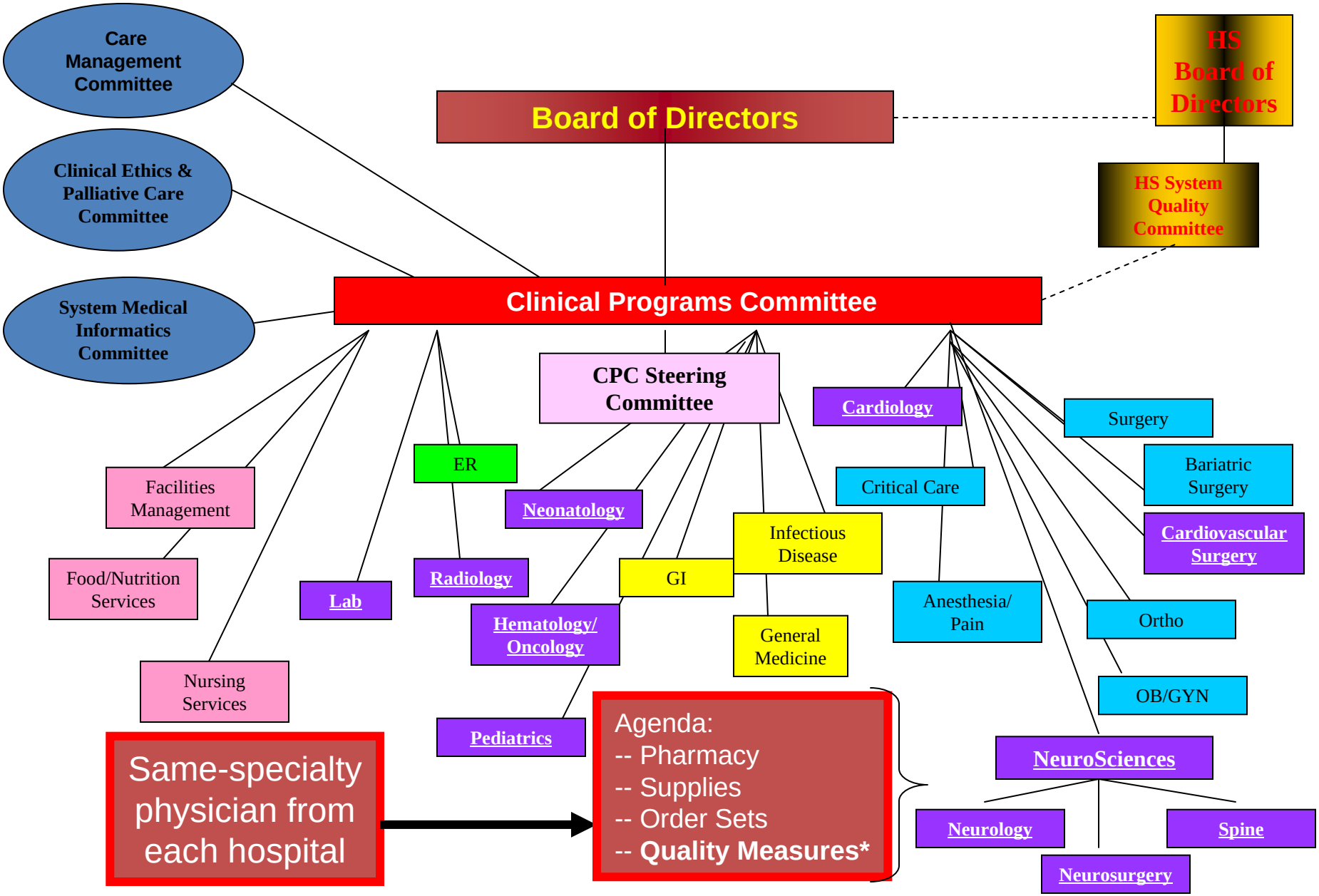
- *Ambulatory EMR initiative*
- *Use of EMR for hospital-based physicians*
- *Review of data, use of evidence-based medicine*
- *Chronic Disease Management: Diabetes, CHF, Asthma*
- *Preventive Health Management*
- *Immunizations (adult and child)*
- *Physician education*
- *Pharmacy initiative*
- *Inpatient Quality of Care Measures: AMI, HF, CAP, SIP*
- *Timely completion of Medical Records*
- *Hospital Quality Indicators*

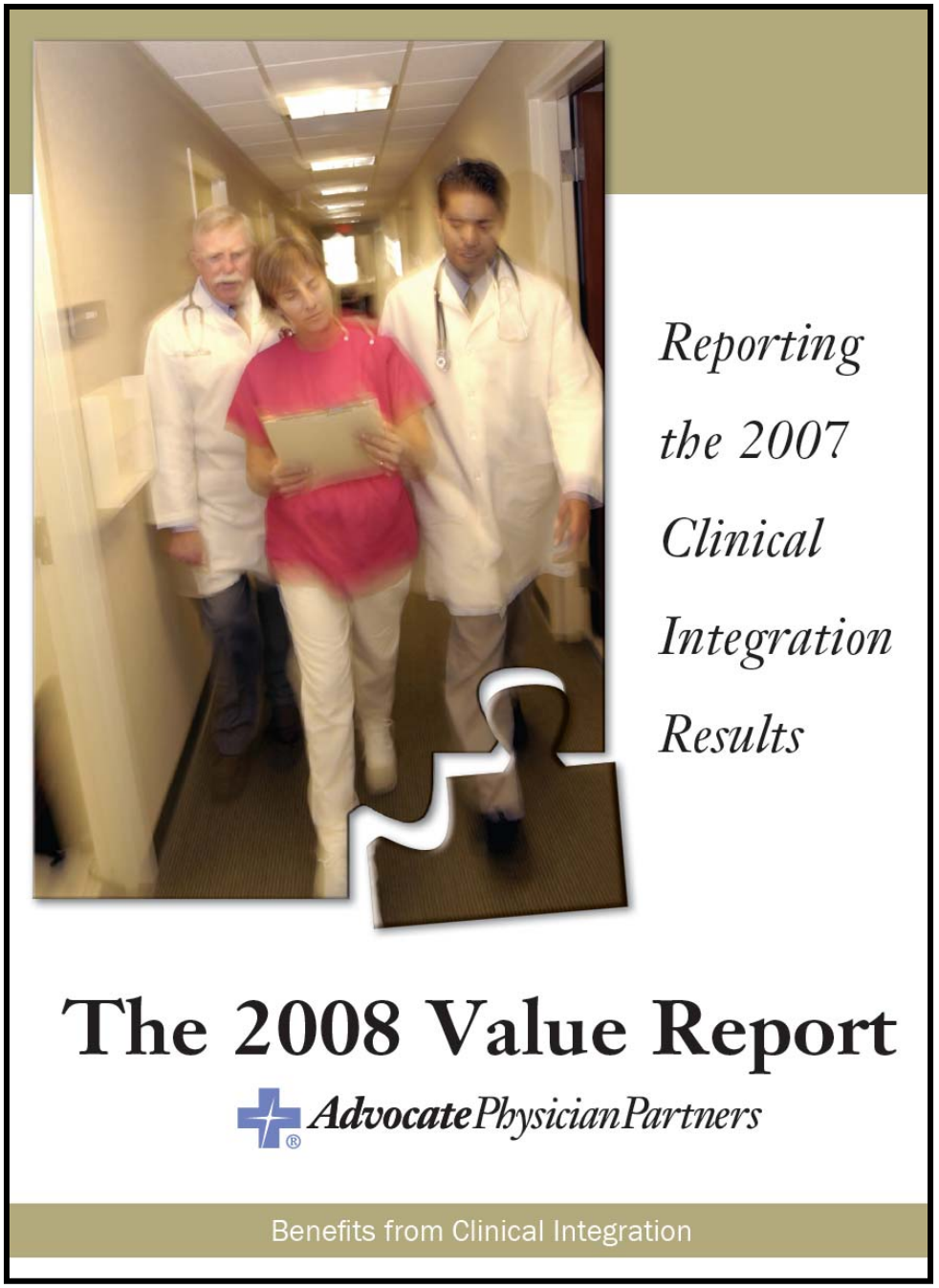
18

Example C: 8 hospitals & 2100 physicians



Clinical Programs Committee





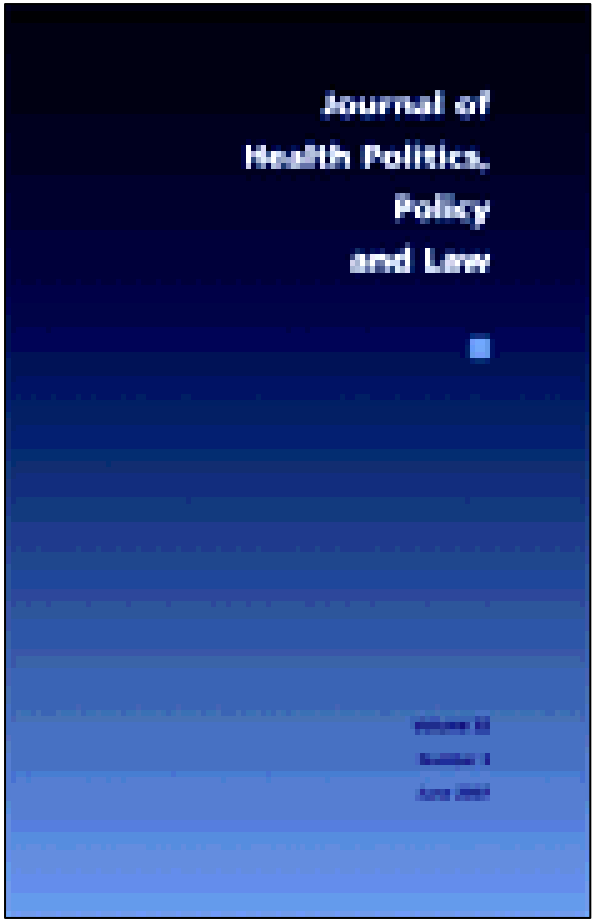
www.advocatehealth.com

Search for: 2008 Value Report

(http://www.advocatehealth.com/physpartners/about/employers/value_report.html)

Or call 1.800. 3ADVOCATE

Food for thought…



"Though creating clinically integrated organizations is difficult and expensive, physicians should recognize that clinical integration can help them both to gain some negotiating leverage with health plans and to improve the quality of care for their patients."

Lawrence P. Casalino M.D., Ph.D., University of Chicago

"The Federal Trade Commission, Clinical Integration, and the Organization of Physician Practice," *Journal of Health Politics, Policy and Law,* 2006, Duke University Press, 31(3):569-585; DOI:10.1215/03616878-2005-007