

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

In the Matter of

**PIEDMONT HEALTH ALLIANCE, INC.,
a corporation,**

and

**PETER H. BRADSHAW, M.D.,
S. ANDREWS DEEKENS, M.D.,
DANIEL C. DILLON, M.D.,
SANFORD D. GUTTLER, M.D.,
DAVID L. HARVEY, M.D.,
JOHN W. KESSEL, M.D.,
A. GREGORY ROSENFELD, M.D.,
JAMES R. THOMPSON, M.D.
ROBERT A. YAPUNDICH, M.D.,
and WILLIAM LEE YOUNG III, M.D.,
individually**

Docket No. 9314

**ANSWER OF RESPONDENTS PIEDMONT HEALTH ALLIANCE, INC., ET AL.,
TO COMPLAINT OF FEDERAL TRADE COMMISSION**

Pursuant to 16 C.F.R. § 3.12, Respondents Piedmont Health Alliance, Inc. (“PHA”), Peter H. Bradshaw, M.D., S. Andrews Deekens, M.D., Daniel C. Dillon, M.D., Sanford D. Guttler, M.D., David L. Harvey, M.D., John W. Kessel, M.D., A. Gregory Rosenfeld, M.D., James R. Thompson, M.D., Robert A. Yapundich, M.D., and William Lee Young, III, M.D. (collectively “Respondents”), hereby answer the Complaint of the Federal Trade Commission as

follows:¹

1. Respondents deny each and every allegation of Paragraph 1 of the Complaint.
2. Admitted.
3. Admitted, except that the zip code for Dr. Deekens is 28655.
4. Respondents admit that PHA has facilitated contracting between its members and payors. Respondents deny each and every remaining allegation of Paragraph 4 of the Complaint.
5. Admitted.
6. Respondents deny each and every allegation of Paragraph 6 of the Complaint.
7. Admitted.
8. Respondents lack knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 8 and, on that basis, deny such allegations
9. Respondents lack knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 9 of the Complaint and, on that basis, deny each such allegation.
10. Respondents admit that the United States Centers for Medicare and Medicaid Services use Medicare's Resource Based Relative Value Scale ("RBRVS") to value the services that physicians render to Medicare patients. Respondents lack knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 10 of the Complaint and, on that basis, deny each such allegation.
11. Respondents lack knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 11 of the Complaint and, on that basis, deny each such

¹ All responses are on behalf of all respondents unless specifically noted otherwise.

allegation.

12. Respondents lack knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 12 of the Complaint and, on that basis, deny each such allegation.

13. Respondents lack knowledge and information sufficient to form a belief as to the truth of the allegations of the first sentence in Paragraph 13 of the Complaint and, on that basis, deny each such allegation. Respondents deny each and every remaining allegation in Paragraph 13 of the Complaint.

14. Respondents PHA, Dillon, Guttler, Harvey, Rosenfeld and Young admit that in 1993 the Chief Executive Officer (“CEO”) of Frye Regional Medical Center, Inc. (“Frye”), formulated a plan to create a PHO that would include Frye and physicians who practiced at Frye. These same Respondents also admit that Frye hired a health care consultant in connection with the PHO. All remaining Respondents lack knowledge and information sufficient to form a belief as to the truth of these allegations and, on that basis, deny each such allegation. All Respondents lack knowledge and information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 14 of the Complaint and, on that basis, deny each such allegation.

15. Respondents PHA, Dillon and Guttler admit that Drs. Dillon and Guttler served on a steering committee that considered decisions about the formation of the PHO. All remaining Respondents lack knowledge and information sufficient to form a belief as to the truth of these allegations and, on that basis, deny each such allegation. All Respondents lack knowledge and information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 15 of the Complaint and, on that basis, deny each such allegation.

16. Respondents PHA, Dillon, Guttler, Harvey, Kessel, Rosenfeld and Young admit that in 1994, PHA was incorporated and its shareholders elected a Board of Directors, composed of physician and hospital representatives from the PHA membership. These same Respondents admit that in late fall of 1995, PHA hired a full-time CEO, who was charged with overseeing the day-to-day operations of PHA, subject to approval by the PHA Board. All remaining Respondents lack knowledge and information sufficient to form a belief as to the truth of these allegations and, on that basis, deny each such allegation. All Respondents lack knowledge and information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 16 and, on that basis, deny each such allegation.

17. Respondents admit that in early 1995, representatives of PHA participated in discussions with Caldwell Memorial Hospital (“Caldwell Memorial”), Grace Hospital (“Grace”), and their medical staffs about the possibility of joining PHA. Respondents also admit that in 1996, PHA amended its Articles of Incorporation and Bylaws to permit Caldwell Memorial, Grace and their medical staffs to join PHA. Respondents deny each and every remaining allegation of Paragraph 17 of the Complaint.

18. Respondents lack knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 18 of the Complaint and, on that basis, deny each such allegation.

19. Respondents admit that PHA’s physician participation agreements requested that physicians terminate existing contracts with payors, if possible, if PHA also had a contract with that payor. Respondents deny each and every remaining allegation of Paragraph 19 of the Complaint.

20. Respondents PHA, Dillon, Guttler, Harvey, Rosenfeld and Young admit that PHA established a Contracts Committee in 1994, which reviewed payor contracts. All remaining Respondents lack knowledge and information sufficient to form a belief as to the truth of these allegations and, on that basis, deny each such allegation. All Respondents admit that the Contracts Committee has not met since April 2001. All Respondents admit that Drs. Guttler, Harvey, Rosenfeld and Yapundich were members on the Contracts Committee for some or all of this time period. All Respondents deny each and every remaining allegation of Paragraph 20 of the Complaint.

21. Respondents PHA, Dillon, Guttler, Harvey, Kessel, Rosenfeld and Young admit from 1994 through early 1996, Frye's Chief Financial Officer ("CFO") and Chief Operating Officer ("COO") communicated with certain payors on behalf of PHA. All remaining Respondents lack knowledge and information sufficient to form a belief as to the truth of these allegations and, on that basis, deny each such allegation. All Respondents admit that, beginning in 1996, PHA's CEO and her staff assumed responsibility for communicating with payors regarding PHA payor contracts. All Respondents also admit that PHA's Board and Contracts Committee reviewed certain terms of certain payor contracts and gave direction to PHA's CEO on whether contracts should be signed. Respondents deny each and every remaining allegation of Paragraph 21 of the Complaint.

22. Respondents admit that PHA's Board authorizes PHA to sign contracts with payors before they can take effect. Respondents also admit that PHA's Board is composed of 14 physician directors and six hospital directors, two representing each hospital (but with only one vote per hospital). Respondents admit that approval of both a majority of the PHA physician

directors and two of the three hospital shareholders is required for actions requiring a super-majority vote under PHA's bylaws. Respondents deny each and every remaining allegation of Paragraph 22 of the Complaint.

23. Respondents admit that PHA hired actuaries for multiple services, including development of certain physician fee schedules. Respondents deny each and every remaining allegation of Paragraph 23 of the Complaint.

24. Respondents admit that many PHA payor contracts have been single-signature contracts covering the services of most of its physician members. Respondents deny each and every remaining allegation of Paragraph 24 of the Complaint.

25. Respondents admit that PHA's physician participation agreements originally had a provision that individual providers generally did not negotiate with payors at the same time PHA was communicating with the same payors on their behalf. This provision was removed in 2001. Respondents deny each and every remaining allegation of Paragraph 25 of the Complaint.

26. Respondents admit that certain PHA payor contracts had exclusivity provisions. Respondents deny each and every remaining allegation of Paragraph 26 of the Complaint.

27. Respondents admit that competing physicians may lawfully use a "messenger model" to facilitate contracting with payors. Respondents further admit that messenger model arrangements reduce contracting costs between payors and physicians, and are one way to achieve efficiencies. Respondents admit that, through the use of a messenger model, payors can, at less cost, discern physician willingness to contract at particular prices and assemble networks, while physicians can more efficiently practice medicine and assess contracting opportunities. Respondents deny each and every remaining allegation of Paragraph 27 of the Complaint.

28. Respondents admit that in February 2001, PHA's Board voted to adopt a "modified messenger model" that applied prospectively to PHA's method of contracting with payors for physician services. Respondents deny each and every remaining allegation of Paragraph 28 of the Complaint.

29. Respondents admit that PHA's modified messenger model allowed its physician members to unilaterally and confidentially report to PHA the minimum price levels at which they would be willing to contract with payors. Respondents also admit that PHA provided certain physician members with information regarding the fees they were being paid under several pre-existing PHA-payor contracts. Respondents lack knowledge and information sufficient to form a belief as to whether many PHA physician members used the information PHA provided to determine the prices that they set as their "standing offer" under the modified messenger model. Respondents deny each and every remaining allegation of Paragraph 29 of the Complaint.

30. Respondents admit that PHA has used its modified messenger model to process payor contracts with CIGNA HealthCare of North Carolina, Inc. ("CIGNA") and United HealthCare of North Carolina, Inc. ("United"). Respondents deny each and every remaining allegation of Paragraph 30 of the Complaint.

31. Respondents deny each and every allegation of Paragraph 31 of the Complaint.

32. Respondents deny each and every allegation of Paragraph 32 of the Complaint.

33. Respondents admit that approximately 90% of PHA's physician members agreed to participate in the contracts with United and CIGNA. Respondents deny each and every remaining allegation of Paragraph 33 of the Complaint.

34. Respondents admit that all of the Physician Respondents were, at times, voting

members of the PHA Board. In that capacity, the Physician Respondents admit that they participated in decisions of the PHA Board, which included whether or not to sign certain payor contracts, terminate certain payor contracts, and approve the development or use of certain fee schedules used in certain payor contracts. Respondents deny each and every remaining allegation of Paragraph 34 of the Complaint.

35. Respondents PHA, Guttler, Harvey, Rosenfeld and Yapundich admit that Drs. Guttler, Harvey, Rosenfeld and Yapundich were members of PHA's Contracts Committee. In that capacity, prior to 2001, Respondents PHA, Guttler, Harvey, Rosenfeld and Yapundich admit that Drs. Guttler, Harvey, Rosenfeld and Yapundich reviewed certain terms of certain payor contracts and made recommendations on such contracts to the Board. Respondents PHA, Guttler, Harvey, Rosenfeld and Yapundich deny each and every remaining allegation of Paragraph 35 of the Complaint. The remaining Respondents lack knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 35 of the Complaint and, on that basis, deny each such allegation.

36. Respondents deny each and every allegation of Paragraph 36 of the Complaint.

37. Respondents deny each and every allegation of Paragraph 37, 37(A), 37(B), and 37(C) of the Complaint.

38. Respondents deny each and every allegation of Paragraph 38 of the Complaint.

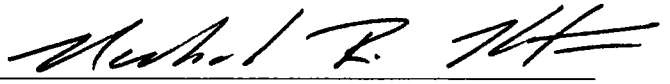
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Dated: January 20, 2004

Respectfully submitted,

By: 

James H. Sneed

Nicholas R. Koberstein

Linda M. Holleran

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ATTORNEYS FOR RESPONDENTS

CERTIFICATE OF SERVICE

I, Linda M. Holleran, hereby certify that on January 20, 2004:

I caused two copies of Answer of Respondents Piedmont Health Alliance, Inc., et al., to Complaint of Federal Trade Commission, to be served by hand delivery upon the following person:

Hon. D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
Room H-104
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

I caused two copies of Answer of Respondents Piedmont Health Alliance, Inc., et al., to Complaint of Federal Trade Commission, to be served by electronic delivery and by hand delivery upon the following:

Office of the Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

I caused a copy of Answer of Respondents Piedmont Health Alliance, Inc., et al., to Complaint of Federal Trade Commission to be served via facsimile transmission and followed by U.S. mail delivery to the following person:

David M. Narrow, Esq.
Complaint Counsel
Bureau of Competition
Federal Trade Commission
601 New Jersey Avenue, N.W.
Room S-3013
Washington, D.C. 20580

I caused a copy of Answer of Respondents Piedmont Health Alliance, Inc., et al., to Complaint of Federal Trade Commission to be served via facsimile transmission and followed by U.S. mail delivery to the following person:

Jeffrey Brennan, Esq.
Assistant Director Health Care Services & Products
Bureau of Competition
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, D.C. 20580


Linda M. Holleran