UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of	)	
PIEDMONT HEALTH ALLIANCE, INC., a corporation,	)	Docket No. 9314
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.	)	

Complaint Counsel's Objections and Responses to Piedmont Health Alliance, Inc.'s First Requests for Admissions

Complaint counsel submit the following objections and responses to respondent Piedmont Health Alliance, Inc.'s first requests for admissions, in accordance with Rule 3.32 of the Commission's Rules of Practice, 16 C.F.R. § 3.32 (2004), and Paragraph Seven of the Scheduling Order. The full text of each request for admission is set forth below, *in italics*, followed by our objections and responses. A response to any request for admission shall not constitute a waiver of any applicable objection, privilege, or other right. Additionally, we reserve the right to supplement or amend our responses as further information becomes available.

General Objections

We object to the instructions and definitions to the extent that they purport to impose requirements on us beyond those set forth in the Commission's Rules of Practice and the Scheduling Order. Additionally, we object to each request for admission to the extent that it calls for the disclosure of material or information protected by one or more of the following privileges:

1. attorney-client privilege;
2. work-product doctrine; and,
3. deliberative process privilege.

Responses to Requests for Admissions

Subject to the general objections above, we provide the following responses:

Request 1: Admit that the legality of PHA's Bonus Plan Contracts is not being challenged in this adjudicative proceeding.

Response to Request No. 1:

Admitted. This admission, however, should not be construed as a determination that the Commission or complaint counsel have concluded that PHA's Bonus Plan Contracts are legal under the antitrust laws.

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Request 2: Admit that under PHA's Modified Messenger Model, each PHA member only received information about the fees that those individual practices would have received under previous payer contracts.

Response to Request No. 2:

We can neither admit nor deny Request No. 2 because we do not know all of the information each PHA member received under the Modified Messenger Model contract negotiation methodology and its implementation, including the meetings PHA staff had with each physician practice. That information presumably is known by PHA and its members.

This request is denied to the extent that each PHA member was provided information by PHA about the fees that other members received under prior payer contracts. In setting up its Modified Messenger Model contract negotiation methodology, PHA provided each member's practice group a "PHA Modeling Results Report." The information contained in the Modeling Report provided by PHA to each PHA member's practice was expressed as aggregate percentages of Medicare's Resource Based Relative Value Scale ("RBRVS"). Although one component of these aggregate percentages was utilization data specific to each PHA member's practice, another component of the aggregate RBRVS percentages was prices from fee schedules for two specific payers' contracts (Blue Cross and Blue Shield and Partners) and two categories of contracts (direct employer fee-for-service contracts and Bonus Plan employer contracts). These fee schedules were common to all PHA members, such that if PHA members performed the same service (e.g., a fifteen minute office exam), each PHA member received the same price for that service. Therefore, each PHA member had access to, and knowledge of, the fees that other PHA members received under previous payer contracts.

Request 3: Admit that under PHA's Modified Messenger Model, no PHA member received information about fees that other PHA physician members received under prior payer contracts.

Response to Request No. 3:

We can neither admit nor deny Request No. 3 because we do not know all of the information each PHA member received under the Modified Messenger Model contract negotiation methodology and its implementation, including the meetings PHA staff had with each physician practice. That information presumably is known by PHA and its members.

This request is denied to the extent that each PHA member was provided information about the fees that other members received under prior payer contracts. In setting up its Modified Messenger Model contract negotiation methodology, PHA provided each member's practice group a "PHA Modeling Results Report." The information contained in the Modeling Report provided by PHA to each PHA member's practice was expressed as aggregate percentages of Medicare's Resource Based Relative Value Scale ("RBRVS"). Although one component of these aggregate percentages was utilization data specific to each PHA member's practice, another component of the aggregate RBRVS percentages was prices from fee schedules for two specific payers' contracts (Blue Cross and Blue Shield and Partners) and two categories of contracts (direct employer fee-for-service contracts and Bonus Plan employer contracts). These fee schedules were common to all PHA members, such that if PHA members performed the same service (e.g., a fifteen minute office exam), each PHA member received the same price for that service. Therefore, each PHA member had access to, and knowledge of, the fees that other PHA members received under previous payer contracts.

Request 4: Admit that under PHA's Modified Messenger Model, PHA physician members submitted different low and high minimum prices to PHA than were submitted by other physician members.

Response to Request No. 4:

We can neither admit nor deny Request No. 4 because PHA has not provided us with the "Payment Parameters for Non Risk Contracts" for all PHA physician members.

This request is denied to the extent that the Payment Parameters for Non Risk Contracts submitted by PHA physician members to PHA did not include specific prices. What it did include, and what was submitted, were low and high minimum aggregate payment level targets stated in terms of percentage of Medicare Resource Based Relative Value Scale payment levels for those services. Those aggregate payment levels were based on expected numbers of different services to be provided and the specific prices to be set for each service. PHA developed specific prices by devising fee schedules to meet each physician's aggregate payment level targets, based on anticipated service utilization levels.

Also, in many cases, these targets were not submitted by individual PHA physician members but by physician practice groups. Accordingly, PHA physician members who belonged to the same practice groups submitted the same, not different, low and high minimum aggregate payment targets.

Further, certain PHA practice groups submitted low and high minimum aggregate payment targets that were identical to the low and high minimum aggregate payment targets submitted by other PHA practice groups.

Request 5: Admit that under PHA's Modified Messenger Model, PHA physician members submitted different high minimum prices to PHA.

Response to Request No. 5:

We can neither admit nor deny Request No. 5 because PHA has not provided us with the "Payment Parameters for Non Risk Contracts" for all PHA physician members.

This request is denied to the extent that the Payment Parameters for Non Risk Contracts submitted by PHA physician members to PHA did not include specific prices. What it did include, and what was submitted, were high minimum aggregate payment level targets stated in terms of percentage of Medicare Resource Based Relative Value Scale payment levels for those services. Those aggregate payment levels were based on expected numbers of different services to be provided and the specific prices to be set for each service. PHA developed specific prices by devising fee schedules to meet each physician's aggregate payment level targets, based on anticipated service utilization levels.

Also, in many cases, these targets were not submitted by individual PHA physician members but by physician practice groups. Accordingly, PHA physician members who belonged to the same practice groups submitted the same, not different, high minimum aggregate payment targets.

Further, certain PHA practice groups submitted high minimum aggregate payment targets that were identical to high minimum aggregate payment targets submitted by other PHA practice groups. And, certain PHA practice groups submitted high minimum aggregate payment targets that were identical to high minimum aggregate payment targets PHA provided to them in the "PHA Modeling Results Reports" sent to those practice groups.

Request 6: Admit that under PHA's Modified Messenger Model, PHA physician members within particular specialties, submitted different low minimum prices to PHA.

Response to Request No. 6:

We can neither admit nor deny Request No. 6 because PHA has not provided us with the "Payment Parameters for Non Risk Contracts" for all PHA physician members.

This request is denied to the extent that the Payment Parameters for Non Risk Contracts submitted by PHA physician members to PHA did not include specific prices. What it did include, and what was submitted, were low minimum aggregate payment level targets stated in terms of percentage of Medicare Resource Based Relative Value Scale payment levels for those services. Those aggregate payment levels were based on expected numbers of different services to be provided and the specific prices to be set for each service. PHA developed specific prices by devising fee schedules to meet each physician's aggregate payment level targets, based on anticipated service utilization levels.

Also, in many cases, these targets were not submitted by individual PHA physician members but by physician practice groups. Accordingly, PHA physician members who belonged to the same practice groups submitted the same, not different, low minimum aggregate payment targets.

Further, certain PHA practice groups submitted low minimum aggregate payment targets that were identical to low minimum aggregate payment targets submitted by other PHA practice groups within the same speciality. And, certain PHA practice groups submitted low minimum aggregate payment targets that were identical to low minimum aggregate payment targets PHA provided to them in the "PHA Modeling Results Reports" sent to those practice groups.

Request 7: Admit that under PHA's Modified Messenger Model, PHA physician members within particular specialties, submitted different high minimum prices to PHA.

Response to Request No. 7:

We can neither admit nor deny Request No. 7 because PHA has not provided us with the "Payment Parameters for Non Risk Contracts" for all PHA physician members.

This request is denied to the extent that the Payment Parameters for Non Risk Contracts submitted by PHA physician members to PHA did not include specific prices. What it did include, and what was submitted, were high minimum aggregate payment level targets stated in terms of percentage of Medicare Resource Based Relative Value Scale payment levels for those services. Those aggregate payment levels were based on expected numbers of different services to be provided and the specific prices to be set for each service. PHA developed specific prices by devising fee schedules to meet each physician's aggregate payment level targets, based on anticipated service utilization levels.

Also, in many cases, these targets were not submitted by individual PHA physician members but by physician practice groups. Accordingly, PHA physician members who belonged to the same practice groups submitted the same, not different, high minimum aggregate payment targets.

Furthermore, certain PHA practice groups submitted high minimum aggregate payment targets that were identical to high minimum aggregate payment targets submitted by other PHA practice groups within the same speciality. And, certain PHA practice groups submitted high minimum aggregate payment targets that were identical to high minimum aggregate payment targets PHA provided to them in the "PHA Modeling Results Reports" sent to those practice groups.

Request 8: Admit that under PHA's Modified Messenger Model, the information that PHA provided to its physician members referred to in paragraph 29 of the Complaint reflected PHA's lowest priced fee schedules.

Response to Request No. 8:

We can neither admit nor deny Request No. 8 because we do not know all of the information PHA provided to each of its physician members under PHA's Modified Messenger Model contract negotiation methodology. That information presumably is known to PHA and its physician members.

This request is admitted to the extent that the information that PHA provided to its physician members referred to in paragraph 29 of the Complaint may have included the lowest reimbursement levels collectively negotiated by PHA in its contracts with payers. However, that information provided by PHA apparently included PHA's lowest *and highest* aggregate reimbursement levels collectively negotiated by PHA in its contracts with payers.

Request 9: Admit that under PHA's Modified Messenger Model, PHA doctors who submitted minimum prices that exceeded a payer's initial proposal did not know whether the payer would permit them to later accept that proposal.

Response to Request No. 9:

We object to Request No. 9 on the basis that it calls for speculation as to what PHA doctors know or knew regarding each contract processed through PHA's Modified Messenger Model contract negotiation methodology. Further, we have made a reasonable inquiry and the information known or readily obtainable to us is insufficient to be able to admit or deny this request.

Request 10: Admit that PHA's computer algorithm which matches payer offers to PHA physician members' minimum prices is an acceptable method of establishing a competitive equilibrium under the joint DOJ/FTC HealthCare Guidelines.

Response to Request No. 10:

We object to Request No. 10 because it is unclear what an "acceptable method of establishing a competitive equilibrium under the joint DOJ/FTC HealthCare Guidelines" means. The joint DOJ/FTC HealthCare Guidelines make no mention of methods of establishing a competitive equilibrium, much less what an "acceptable" method of establishing a competitive equilibrium is.

Further, we can neither admit nor deny this request because PHA has not provided us with its Modified Messenger Model contract negotiation methodology software, which we believe contains PHA's computer algorithm that matches payer offers to PHA physician members' minimum prices, despite our repeated requests for the software and other information presumably containing the algorithm (*see, e.g.*, Specifications 5 and 6 of our First Request for Production of Documents and Things Issued to Respondent Piedmont Health Alliance, Inc. (Feb. 17, 2004)). Accordingly, we do not know how PHA's algorithm matches payer offers to PHA physician members' minimum prices.

Request 11: Admit that United is satisfied with the current level of PHA member participation in its contract.

Response to Request No. 11:

We object to Request No. 11 because the term "satisfied" is vague and because this request calls for us to speculate about United's state of mind. Further, we have made a

reasonable inquiry and the information known or readily obtainable to us is insufficient to be able to admit or deny this request.

Request 12: Admit that Cigna is satisfied with the current level of PHA member participation in its contract.

Response to Request No. 12:

We object to Request No. 12 because the term "satisfied" is vague and because this request calls for us to speculate about Cigna's state of mind. Further, we have made a reasonable inquiry and the information known or readily obtainable to us is insufficient to be able to admit or deny this request.

Request 13: Admit that the information referenced in paragraph 29 of the Complaint that PHA provided to its physician members included PHA's lowest priced contracts.

Response to Request No. 13:

We can neither admit nor deny Request No. 13 because we do not know all of the information PHA provided to each of its physician members under PHA's Modified Messenger Model contract negotiation methodology. That information presumably is known to PHA and its physician members.

This request is denied to the extent that, under PHA's Modified Messenger Model contract negotiations, PHA did not actually provide payer contracts to its physician members. What PHA apparently provided its physician members were practice-specific aggregate and individual procedure reimbursement levels under certain payer contracts.

This request is admitted to the extent that the information that PHA provided to its physician members referred to in paragraph 29 of the Complaint may have included the lowest

reimbursement levels collectively negotiated by PHA in its contracts with payers. However, that information provided by PHA apparently included PHA's lowest *and highest* aggregate reimbursement levels collectively negotiated by PHA in its contracts with payers.

Respectfully submitted,

Markus H. Meier
David M. Narrow
Christi Braun
Andrew S. Ginsburg
Counsel Supporting the Complaint

Dated: April 12, 2004

CERTIFICATE OF SERVICE

I, Brian Beall, hereby certify that on April 12, 2004:

I caused copies of Complaint Counsel's Objections and Responses to Respondent Piedmont Health Alliance, Inc.'s First Requests for Admissions to be served by hand delivery upon the following person:

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

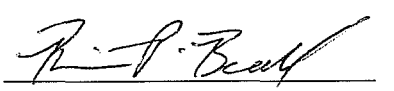
I caused one original and one copy of Complaint Counsel's Objections and Responses to Respondent Piedmont Health Alliance, Inc.'s First Requests for Admissions to be served by hand delivery and one copy to be served by electronic mail upon the following person:

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

I caused copies of Complaint Counsel's Objections and Responses to Respondent Piedmont Health Alliance, Inc.'s First Requests for Admissions to be served by electronic mail and U.S. Mail upon the following persons:

Nicholas R. Koberstein, Esq.
McDermott, Will & Emery
600 13th Street, N.W.
Washington, D.C. 20005

Paul L. Yde
Senior Counsel
Freshfields Bruckhaus Deringer LLP
701 Pennsylvania Avenue, N.W., Suite 600
Washington, D.C. 20004-2692



Brian Beall