

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

<p style="text-align: center;">In the Matter of</p> <p>SYSTEM HEALTH PROVIDERS, INC., a corporation, and</p> <p>GENESIS PHYSICIANS GROUP, INC., a corporation.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Docket No. C-4064</p>
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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Genesis Physicians Group, Inc. (“GPG”) and System Health Providers, Inc. (“SHP”) have violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges in that respect as follows:

RESPONDENTS

PARAGRAPH 1: Respondent SHP is a for-profit corporation, organized, existing, and doing business under and by virtue of the laws of Texas, with its office and principal place of business at 12201 Merit Drive, Suite 450, Dallas, TX 75251.

PARAGRAPH 2: Respondent GPG is a non-profit corporation, organized, existing, and doing business under and by virtue of the laws of Texas, with its office and principal place of business at 12201 Merit Drive, Suite 440, Dallas, TX 75251.

JURISDICTION

PARAGRAPH 3: At all times relevant to this Complaint, almost all members of GPG were physicians engaged in the business of providing health care services for a fee. Except to the extent that competition has been restrained as alleged herein, members of GPG have been, and are now, in competition with each other for the provision of physician services.

PARAGRAPH 4: The general business practices of Respondents GPG and SHP, including the acts and practices herein alleged, are in or affecting “commerce” as defined in the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

PARAGRAPH 5: Respondents GPG and SHP have been organized in substantial part, and are engaged in substantial activities, for the pecuniary benefit of their members and are therefore corporations within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

OVERVIEW OF MARKET AND PHYSICIAN COMPETITION

PARAGRAPH 6: Respondent GPG has approximately 1,250 members, almost all of whom are physicians licensed to practice medicine in the State of Texas and engaged in the business of providing professional services to patients in the eastern part of the Dallas-Fort Worth metropolitan area (“Dallas area”).

PARAGRAPH 7: Respondent SHP is a management services organization, the voting stock of which is wholly owned by GPG.

PARAGRAPH 8: Physicians often contract with health insurance firms and other third-party payors, such as preferred provider organizations. Such contracts typically establish the terms and conditions, including price terms, under which the physicians will render services to the payors’ subscribers. Physicians entering into such contracts often agree to lower compensation in order to obtain access to additional patients made available by the payors’ relationship with insureds. These contracts may reduce payor costs and enable payors to lower the price of insurance, and thereby result in lower medical care costs for subscribers to the payors’ health insurance plans.

PARAGRAPH 9: Absent agreements among competing physicians on the terms, including price, on which they will provide services to subscribers or enrollees in health care plans offered or provided by third-party payors, competing physicians decide individually whether to enter into contracts with third-party payors to provide services to their subscribers or enrollees, and what prices they will accept pursuant to such contracts.

PARAGRAPH 10: Medicare’s Resource Based Relative Value System (“RBRVS”) is a system used by the United States Centers for Medicare and Medicaid Services to determine the amount to pay physicians for the services they render to Medicare patients. The RBRVS approach provides a method to determine fees for specific services. In general, it is the practice of payors in the Dallas area to make contract offers to individual physicians or groups at a fee level specified in the RBRVS, plus a markup based on some percentage of that fee (*e.g.*, “110% of 2001 RBRVS”).

PARAGRAPH 11: In order to be competitively marketable in the Dallas area, a payor’s health insurance plan must include in its physician network a large number of primary care physicians and specialists who practice in the Dallas area. Many of the primary care physicians and specialists who practice in the Dallas area are members of GPG.

PARAGRAPH 12: Competing physicians sometimes use a “messenger” to facilitate the establishment of contracts between themselves and payors in ways that do not constitute or facilitate an unlawful agreement on fees and other competitively significant terms. Such a messenger may not, however, consistent with a competitive model, negotiate fees and other competitively significant terms on behalf of the participating physicians, or facilitate the physicians’ coordinated responses to contract offers by, for example, electing not to convey a payor’s offer to them based on the messenger’s opinion on the appropriateness, or lack thereof, of the offer.

RESTRAINT OF TRADE

PARAGRAPH 13: Respondents GPG and SHP, each acting as a combination of competing physicians, have acted to restrain competition by, among other things:

- A. facilitating, negotiating, entering into, and implementing agreements among GPG members on price and other competitively significant terms;
- B. refusing to deal with payors except on collectively agreed-upon terms; and
- C. negotiating uniform fees and other competitively significant terms in payor contracts for Respondent GPG’s members, and refusing to submit payor offers to members that do not conform to Respondent SHP’s standards for contracts.

FORMATION AND OPERATION OF GPG AND SHP

PARAGRAPH 14: In 1995 GPG undertook to educate and assist physicians in contracting with payors for the provision of medical services. GPG, directly or through other organizations which it controlled, entered into contracting activities on behalf of its members, often pursuant to arrangements in which the physicians bore some financial risk (*e.g.*, through agreements to provide required medical services in return for a capitated fee). In or about 1996, GPG formed Genesis Physicians Practice Association (“GPPA”) to be the locus of GPG’s risk-contracting activities. SHP was formed in 1995 by GPG and Presbyterian Healthcare System, and was envisioned to be a medical management company responsible for managing the contracting, credentialing, utilization management, and quality assurance of GPG (and later GPPA). In 1998 GPG purchased substantially all of Presbyterian’s interest in SHP, becoming the sole owner of SHP’s voting stock.

PARAGRAPH 15: GPPA’s risk contracting resulted in significant losses to GPG physicians, and in 1999 GPPA filed for protection under the bankruptcy laws, discontinued its contracts, and ceased doing business. Prior to and following the demise of GPPA, SHP increasingly undertook, on behalf of GPG and its physicians, to negotiate with payors non-risk contracts that provide for higher fees and other more advantageous terms than its individual physicians could obtain by negotiating unilaterally with payors.

PARAGRAPH 16: Physicians seeking to join GPG apply for membership and, if qualified, are approved for membership by the GPG Membership Committee and Board of Trustees. Each physician then typically has signed a “Participation Agreement” with SHP, authorizing SHP to negotiate non-risk contracts with payors on his or her behalf.

PARAGRAPH 17: SHP personnel have negotiated with payors the fees and other terms pursuant to which SHP members may render medical care to persons covered by the payors. Following acceptance of a contract by vote of SHP’s Board of Directors, SHP has summarized and commented to GPG members on the terms of that contract and offered GPG members an opportunity to opt in or out of the agreement. Unless a physician opted out, he or she was deemed, under the SHP “Participation Agreement,” to have opted in under the SHP-negotiated contract.

PARAGRAPH 18: Rather than acting simply as a “messenger,” as described in Paragraph 12 of this Complaint, SHP actively bargained with payors, often proposing and counter-proposing fee schedules to be applied, among other terms. To maintain its bargaining power, SHP has discouraged GPG members from entering into unilateral agreements with payors. SHP has communicated to GPG members the bargaining advantage gained by negotiating with payors collectively through SHP, in general, and SHP’s determinations that specific fees and other contract terms being offered by payors are “not comparable to market standards” or are otherwise inadequate. Many GPG members have been unwilling to negotiate with payors apart from SHP, and have communicated that fact to payors seeking to resist SHP’s collective demands.

PARAGRAPH 19: SHP had a practice–inconsistent with a messenger model arrangement–of not conveying to GPG members payor offers that SHP deemed deficient, including offers that provide for fees that do not satisfy criteria adopted by SHP’s Contracting Committee, which was comprised of 21 GPG members. SHP instead demanded, and often received, more favorable fee and other contract terms–terms that payors would not have offered to GPG’s members had those members engaged in unilateral, rather than collective, negotiations with the payors. Only after the payor acceded to fee and other contract terms acceptable to SHP, would SHP convey the payor’s proposed contract to GPG members for their consideration.

PARAGRAPH 20: SHP refused to convey payors’ proposed fee and other contract terms to GPG members even where the payor has explicitly requested that it do so. SHP’s discouraging of physicians’ contracting directly with payors and its unwillingness to convey payors’ proposed contracts

to GPG members unless and until those offers satisfy SHP's criteria have rendered it less likely and more costly for payors to establish competitive physician networks in the Dallas area without first coming to terms with SHP. As a result, payors often have offered or acceded to SHP demands for supracompetitive fees for all GPG members.

LACK OF SIGNIFICANT EFFICIENCIES

PARAGRAPH 21: Since July of 1999, neither GPG and its members nor SHP has sought or been willing to enter into agreements with payors in which GPG, SHP, or GPG's members undertake financial risk-sharing. Further, GPG members have not integrated their practices to create significant potential efficiencies. Respondents' joint negotiation of fees and other competitively significant terms has not been, and is not, reasonably related to any efficiency-enhancing integration.

ANTICOMPETITIVE EFFECTS

PARAGRAPH 22: Respondents' actions described in Paragraphs 13 through 20 of this Complaint have had, or tend to have, the effect of restraining trade unreasonably and hindering competition in the provision of physician services in the Dallas area in the following ways, among others:

- A. prices and other forms of competition among Respondent GPG's members were unreasonably restrained;
- B. prices for physician services were increased; and
- C. competition in the purchase of physician services was restrained to the detriment of health plans, employers, and individual consumers.

PARAGRAPH 23: The combination, conspiracy, acts, and practices described above constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. Such combination, conspiracy, acts, and practices, or the effects thereof, are continuing and will continue or recur in the absence of the relief herein requested.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-fourth day of October, 2002, issues its Complaint against Respondents GPG and SHP.

By the Commission.

Donald S. Clark
Secretary

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