comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* SENTRY/Emerging Drug Tracking System, a drug early warning and response system.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Not Applicable.

(4) The 2004 National Synthetic Drugs Action Plan designated NDIC the lead agency for developing an early warning and response system. This instrument is critical for NDIC to detect emerging drug abuse and production trends and thereafter notify law enforcement demand authorities and prepared associated reports. Respondents will be authorized state and local law enforcement officers, and treatment/education/medical service providers.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that during the first year 300 respondents will submit a tip requiring approximately 15 minutes. Use of the system is expected to increase significantly.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 75 total annual burden hours associated with this collection.

*If additional information is required contact:* Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: July 13, 2007.

**Lynn Bryant,**

*Department Clearance Officer, PRA, Department of Justice.*

[FR Doc. E7–13907 Filed 7–17–07; 8:45 am]

**BILLING CODE 4410–DC–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### United States of America v. Federation of Physicians and Dentists, et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) through (h), that a proposed Final Judgment and Competitive Impact Statement have been filed in a civil antitrust case, *United States of America* v. *Federation of Physicians and Dentists, et al.,* Case No. 1:05–cv–431, in the United States District Court for the Southern District of Ohio.

On June 24, 2005, the United States filed a Complaint alleging that the Federation of Physicians and Dentists (''Federation''), Federation employee Lynda Odenkirk, and three physician co-defendants coordinated a conspiracy among Federation Cincinnati-area OB–GYN members to increase fees paid by health care insurers to them, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The three physician co-defendants agreed to a settlement entered by the Court on November 14, 2005. The proposed Final Judgment, filed on June 19, 2007, enjoins the Federation and Ms. Odenkirk from taking future actions in Cincinnati or anywhere else that could facilitate private-practice physicians' coordination of their dealings with health care payers, such as insurers, by prohibiting the Federation's involvement in physicians' contracting with such payers.

A Competitive Impact Statement, filed by the United States, describes the Complaint, the proposed Final Judgment, the industry, and the remedies available to private litigants. Copies of the Complaint, proposed Final Judgment, and the Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, Room 215 North, 325 Seventh Street, NW., Washington, DC 20530 (telephone 202–514–2481), on the Department of Justice's Web site at: *http://www.usdoj.gov/atr/cases/indx26_b.htm*, and at the Office of the Clerk of the United States District Court for the Southern District of Ohio. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Joseph Miller, Acting Chief, Litigation I, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 4000, Washington, DC 20530 (telephone: (202) 307–0001).

**J. Robert Kramer II,**

*Director of Operations, Antitrust Division.*

### United States District Court for the Southern District of Ohio Western Division

United States of America, Plaintiff, vs. Federation of Physicians and Dentists, Lynda Odenkirk, Warren Metherd, Michael Karram, and James Wendel, Defendants.

[Civil Action No. 1:05–cv–431; Filed Jun 24, 2005]

### Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this action for equitable and other relief against Defendants: Federation of Physicians and Dentists (''Federation''), Federation employee Lynda Odenkirk, and Federation members Warren Metherd, M.D., Michael Karram, M.D., and James Wendel, M.D., to restrain Defendants' violations of Section 1 of the Sherman Act in concert with the Federation's other Cincinnati-area obstetrician and gynecologist (''OB–GYN'') members.

### I. Introduction

1. In concert with approximately 120 OB–GYN Federation members located in the Cincinnati area (''Federation members''), Defendants participated in a conspiracy to increase fees paid by health care insurers to Federation members. The Defendant physicians and other competing Federation members joined the Federation to use its services to coordinate the renegotiation of their contracts with Cincinnati-area healthcare insurers. The Federation, with substantial assistance from the Defendant physicians, coordinated and helped implement its members' concerted demands to insurers for higher fees and related terms, accompanied by threats of contract terminations.

2. Defendants' and their conspirators' collusion caused Cincinnati-area health care insurers to raise fees paid to Federation members above the levels that would likely have resulted if Federation members had negotiated competitively with those insurers. As a result of Defendants' and other Federation members' conduct, the three largest Cincinnati-area health care insurers were each forced to increase fees paid to most Federation members by approximately 15–20% starting July 1, 2003, followed by cumulative increases of 20–25%, starting January 1, 2004, and 25–30%, effective January 1, 2005. Defendants' concerted conduct also caused other insurers to raise the fees they paid to Federation members.

3. The United States, through this suit, asks this Court to declare Defendants' conduct illegal and to enter injunctive relief to prevent further injury to consumers in the Greater Cincinnati area and elsewhere.

**II. Defendants**

4. The Federation is a membership organization comprising mostly physicians and dentists, and is headquartered in Tallahassee, Florida. The Federation's physician membership includes economically independent, competing physicians in private practice in localities in many states, including Cincinnati, Ohio. The Federation offers these independent physicians assistance in negotiating fees and other terms in their contracts with health care insurers.

5. Lynda Odenkirk has been employed in Wallingford, Connecticut, by the Federation since 1997 as a Regional Director and Contract Analyst. Ms. Odenkirk worked with Cincinnati-area Federation members from May, 2002, through at least 2004.

6. Warren Metherd, M.D., is an OB–GYN presently in a solo practice in Cincinnati.

7. Michael Karram, M.D., is an OB–GYN practicing in Cincinnati and is the Chief Executive Officer of Seven Hills Women's Health Centers, a practice comprising several groups totaling 22 OB–GYNs in Cincinnati.

8. James Wendel, M.D., is an OB–GYN practicing in Cincinnati and is the Chief Executive Officer of Mount Auburn Obstetrics and Gynecologic Associates, Inc., a group practice of nine OB–GYNs in Cincinnati.

**III. Jurisdiction and Venue**

9. The United States brings this action to prevent and restrain Defendants' recurring violations of Section 1 of the Sherman Act. The Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. 4 and 28 U.S.C. 1331 and 1337.

10. During 2002 and 2003, the Federation's Cincinnati OB–GYN Chapter enrolled as paid members over 120 OB–GYN physicians, most practicing in the Southern District of Ohio and some in nearby northern Kentucky communities. The Federation and Ms. Odenkirk have transacted business and committed acts in furtherance of the conspiracy in the Southern District of Ohio. Drs. Metherd, Karram, and Wendel each provide OB–GYN services in the Southern District of Ohio. Consequently, this Court has personal jurisdiction over Defendants, and venue is proper in this District pursuant to 28 U.S.C. 1391(b)(2).

**IV. Conspirators**

11. Various persons, not named as defendants in this action, have participated as conspirators with Defendants in the offense alleged and have performed acts and made statements in furtherance of the alleged conspiracy.

**V. Effects on Interstate Commerce**

12. The activities of the Defendants that are the subject of this Complaint are within the flow of, and have substantially affected, interstate trade and commerce.

13. Federation representatives have traveled across state lines to meet with Federation members and also have communicated with them by mail, e-mail, and telephone across state lines. Federation members have communicated with Federation representatives and have remitted their Federation membership dues across state lines. Some Federation members have also traveled from Kentucky to Ohio to attend Federation meetings and have communicated with other Federation members across the Ohio-Kentucky state line.

14. Federation members have treated patients who live across state lines, and Federation members have also purchased equipment and supplies that were shipped across state lines.

15. Health care insurers operating in the Cincinnati area remit substantial payments across state lines to Federation members. Health care insurers' payments to Federation members affect the reimbursements paid to insurers by self-insured employers, whose plans they administer, and also affect the premiums for health care insurance those insurers charge other employers. Many of the affected employers sell products and services in interstate commerce. The reimbursements and premiums those health care insurers receive from employers for administration or coverage of the expenses of their employees' health care needs, including OB–GYN services, represent a cost of production for those employers that affects the prices at which those firms' products are sold in interstate commerce.

**VI. Cincinnati Area Health Care Insurers and OB–GYNs**

16. At least six major health care insurers provide coverage in the Cincinnati area: WellPoint Health Networks, which during the events at issue here was named Anthem, Inc. (''Anthem''), Humana Inc. (''Humana'' or ''ChoiceCare''), United HealthCare Insurance Company (''United''), Cigna Corp. (''Cigna''), Aetna U.S. Healthcare Inc. (''Aetna''), and Medical Mutual of Ohio (''Medical Mutual'' or ''MMO'').

17. Anthem, Humana and United, through administration and insurance of health care benefits, are the three largest private health insurers operating in the Greater Cincinnati area. On the basis of market share, Medical Mutual, Aetna, and Cigna each insures and administers a smaller, but still significant, share of privately financed health coverage in the Greater Cincinnati area. The remainder of the privately financed health insurance coverage market in the Greater Cincinnati area consists of a large number of insurers, each with a small share.

18. All of the major health care insurers operating in the Cincinnati area offer a variety of insurance plans to employers and their employees, including ''managed care'' plans such as health-maintenance organizations and preferred provider organizations. To offer such plans, an insurer typically contracts with participating providers, including physicians and hospitals, to form a provider network (or panel). Among other things, such contracts establish the fees that the providers will accept as payment in full for providing covered medical care to the insurer's subscribers. All of the major Cincinnati-area health care insurers consider it necessary to include in their provider panels a substantial percentage of OB–GYN physicians who practice in the Cincinnati area to make their health care plans marketable to area employers and their employees. Before the formation of the alleged conspiracy, Federation member groups competed with each other, in their willingness to accept an insurer's proposed fee levels and other contractual terms, to be included in these insurers' provider panels.

**VII. Defendants' Unlawful Activities**

19. In the spring of 2002, Cincinnati OB–GYNs became interested in joining the Federation primarily to band together to negotiate higher fees from health care insurers. Through a series of meetings with and communications to Cincinnati-area OB–GYNs during the spring, the Federation—assisted by some local OB–GYNs, including Defendants Metherd, Karram, and Wendel—recruited Cincinnati-area OB–GYNs as Federation members and laid the foundation for their coordinated negotiating positions seeking higher fees from major Cincinnati health care insurers. At an initial membership recruitment meeting on April 17, 2002, a featured presentation by Jack Seddon, the Federation's Executive Director, focused on the need for a majority of area OB–GYN practices to use the Federation's contract negotiation services to obtain increased fees from insurers.

20. Ms. Odenkirk, the Federation employee with primary responsibility for dealing with Federation members in Cincinnati, attended a second recruitment meeting on May 7, 2002. At this meeting, the OB–GYNs in attendance decided they needed a 60–70% participation rate in the Federation by OB–GYN physicians in the Cincinnati area for their activities as Federation members to have an impact on area insurance companies. By the end of May 2002, about 75–80% of actively practicing, Cincinnati-area OB–GYNs had opted to join the Federation.

21. On June 10, 2002, the Cincinnati-area OB–GYN Federation chapter held its organizational meeting, which was attended by representatives from many area OB–GYN practices. At the meeting, Jack Seddon, the Federation's Executive Director, told the Federation members that, although the Federation could legally represent only individual physicians, all physicians must remember that they are part of the Federation when making any business decisions regarding a contract. He also explained that, although the Federation could not directly recommend, through its Negotiation Assistance Program, whether Federation members should accept or reject a given provider contract, physicians would be given enough information to allow them to decide whether or not to sign a contract. At the June 10 meeting, Mr. Seddon also explained that Federation members could encourage other member physicians to use the Federation's Negotiation Assistance Program rather than negotiate on their own without Federation involvement.

22. In June and July 2002, Ms. Odenkirk, in consultation with some Federation members, established the order, or the ''game plan,'' by which she would review and coordinate their dealings with the first five health care insurers contracts: Anthem, ChoiceCare, United, Aetna, and Medical Mutual.

23. The Federation mailed a newsletter dated September 4, 2002, to all Federation member practices, notifying them that the Federation had reviewed their current Anthem contract. Accompanying the newsletter was the Federation's contract analysis and a set of proposed changes. An accompanying memorandum addressed to Cincinnati OB–GYN members from Ms. Odenkirk advised members that her contract analysis and proposed alternative language could be used to open negotiations with Anthem.

24. The September 4, 2002, newsletter also encouraged Federation members to use the Federation's ''extremely valuable service'' of acting as their third-party messenger and as a consultant, touted as providing the ''advantage of a nationally experienced consultant who can certainly look out for their best interests when negotiating with insurance plan executives.'' The newsletter suggested that those members dissatisfied with their Anthem contracts, as outlined in the accompanying contract analysis, should copy an enclosed sample ''third party messenger'' letter onto their practice's letterhead to open a dialogue with Anthem. The sample letter advised Anthem that the submitting practice had ''several items of concern'' regarding its current Anthem contract including ''contract language for various clauses and reimbursements rates'' and apprised Anthem that ''the purpose of this letter is to open negotiations with Anthem regarding the provider agreement.'' The sample letter further informed Anthem that the practice had decided to use the Federation as a ''third party messenger'' to facilitate negotiations and that the Federation would be contacting Anthem to open a dialogue. The sample letter also contained a thinly veiled warning that the practice might resort to contract termination if its concerns were not addressed and was understood as such by Anthem.

25. Following Ms. Odenkirk's September 4, 2002, communications regarding the Anthem contract, most Federation member physician practice groups copied the sample letter onto their own letterhead, signed it, and sent it to Anthem.

26. The Federation mailed a newsletter dated September 30, 2002, to all Federation member practices, informing them that there had been a significant response to the September 4, 2002, Anthem contract analysis and that many members had opted to use the ''full services'' of the Federation.

27. Starting on October 11, 2002, Ms. Odenkirk followed up on the Federation members' letters to Anthem. She notified Anthem that the Federation would be facilitating Federation members' discussion of their Anthem contract. For each such practice, Ms. Odenkirk sent Anthem a substantively identical letter enclosing a proposed amendment to the contracts ''that addresses some of their concerns.'' The set of proposed amendments was essentially the same set that Ms. Odenkirk had forwarded on September 4, 2002, to all Federation members in connection with her review of the Anthem contract.

28. Besides reporting to Federation members' on their response to Anthem, the September 30, 2002, Federation newsletter also focused on another insurer. The newsletter explained to Federation members that the Federation had reviewed their current ChoiceCare contract. The newsletter also included a sample letter to inform ChoiceCare that the Federation would be representing the medical practice as a third-party messenger. The process of negotiating with ChoiceCare then began and tracked the pattem of Federation coordination of negotiations with Anthem.

29. The Federation mailed a newsletter dated October 31,2002, to all Federation member practices, explaining that the Federation had reviewed the contract of yet another insurer: United. The newsletter also included a sample letter to inform United that the Federation would be representing the medical practice as a third-party messenger. The process of negotiations with United then began and tracked the pattem of Federation coordination that occurred in negotiations with Anthem and ChoiceCare.

30. The October 31, 2002, newsletter also noted that 39 OB–GYN practices had joined the local Federation chapter. The newsletter recapped members' status with Anthem, noting that the Federation had initiated contact with Anthem, on behalf of those practices that had submitted third-party messenger letters to Anthem, and that the Federation had received a very significant response from the local chapter practices that had sent Anthem a third-party messenger letter. The newsletter also reported to Federation members that a significant proportion of them had provided e-mail addresses to participate in a ''Critical Alert'' mass e-

mailing system developed by the Federation ''to avoid any situation where a member might miss critical information from the Federation.''

31. On November 1, 2002, the day after the October 31, 2002, newsletter, Ms. Odenkirk e-mailed a ''Critical Federation Alert'' to member practices. After updating all member practices on the status of matters involving United, Humana and Anthem, she wrote:

ALL MEMBERS ARE AGAIN REMINDED OF THEIR REASON FOR JOINING THE LOCAL CHAPTER OF THE FEDERATION. THE OVERALL PURPOSE OF THE FEDERATION IS TO ALLOW MEMBER PHYSICIANS TO DEAL WITH THE INSURANCE INDUSTRY ON AN EQUAL BASIS. WHILE THE FEDERATION CANNOT RECOMMEND THAT PHYSICIANS SIGN OR NOT SIGN A GIVEN PROVIDER AGREEMENT, THE FEDERATION CAN ADVISE A MEMBER WHEN THEY ARE BEING PRESENTED WITH A BAD CONTRACT.

32. By letters dated November 14, 2002, sent to each practice, Anthem responded to the prior correspondence it had received from the practice and the Federation. The letters expressed Anthem's willingness to meet with the practices individually to discuss the concerns raised. Around the same period, Humana communicated to Federation members its preference to deal directly with each practice, rather than with the Federation representing the practices.

33. On November 15, 2002, Ms. Odenkirk spoke by telephone with Anthem representatives. Ms. Odenkirk told the Anthem employees that she represented a large number of OB–GYN practices in the Cincinnati area. Anthem told Ms. Odenkirk they would meet and correspond directly with individual practices. Though noting during the conversation that each practice would need to speak for itself, Ms. Odenkirk stated generally that the physicians would be seeking higher fees at 160% of Medicare levels.

34. Following her telephone conversation with Anthem, Ms. Odenkirk proceeded to coordinate Federation practices' ''individual'' dealings with Anthem, Humana, and United. She e-mailed a ''Critical Federation Alert'' on November 19, 2002, to each practice, addressed to the attention of ''Office Manager.'' The Alert informed each practice that the Federation had, in its role as a third-party messenger, notified Anthem of the practice's desire to initiate negotiations regarding the current Provider Agreement, and advised Anthem that the practice had designated the Federation to represent it and act as its consultant in this process. The Alert then informed member practices they had two options: Negotiate directly with Anthem (noting that if this option were selected the practice was encouraged to forward all communication from Anthem to the Federation), or advise Anthem that the practice wished to have the Federation speak on its behalf.

35. Responding promptly, as requested, to Ms. Odenkirk's November 19, 2002, Critical Federation Alert, most Federation member practices notified the Federation in writing that they wanted the Federation to speak on their behalf as their third-party messenger for contract negotiations with Anthem.

36. On Saturday morning, December 14, 2002, Ms. Odenkirk and most Federation members attended a membership meeting. The meeting was called amid apprehension among Federation members that large Federation member groups might make individual deals with insurers without regard to the interests of smaller Federation groups and solo practitioners. Federation members' discussion at the meeting informed the strategy that Ms. Odenkirk and the Defendant physicians developed for the Federation to coordinate Federation members' contract negotiations with Anthem, ChoiceCare, and United. The strategy employed the Federation's collective knowledge and consultation with Federation members as the ''key'' to ensuring that small groups were not ''left behind'' in negotiations with insurers.

37. Following up promptly on the sense of the December 14 meeting, Dr. Metherd, in coordination with Drs. Wendel and Karram, prepared a draft of a letter for Ms. Odenkirk to send to Federation members. The letter suggested that Federation members again send letters to Anthem demanding higher fees and contract amendments. Reviewing a redraft of the letter by Ms. Odenkirk on December 17, 2003, Dr. Wendel e-mailed Dr. Metherd: ''Have reviewed the letter and changes from Lynda [Odenkirk], I also think that we need to also send similar letters to [C]hoice [C]are and [U]nited. It[']s time to carpet bomb them with these letters and demand responses in a timely fashion. This may be a way for the [F]ederation to help to facilitate the process.''

38. On December 20, 2002, Ms. Odenkirk sent to all Federation member practices the final version of the letter implementing the coordinated strategy developed from the December 14 membership meeting. The letter reviewed the status of the Federation's dealings with Anthem on members' behalf to discuss ''problems in the provider agreement.'' The letter apprised Federation members that Anthem had ''become recalcitrant'' toward the Federation's attempts to attend meetings on behalf of multiple physician groups and that ''[c]onsequently, the Federation [wa]s recommending another tactic by which you may negotiate with Anthem.'' The letter sought to provide Federation members ''with a clear set of guidelines* * * that w[ould] hopefully lead to a productive set of discussions.'' The ''guidelines'' set forth a number of steps for member groups to follow, which the Federation touted as ''the means by which you are most likely to achieve your goals.'' The letter also noted: ''If this tactic is UNSUCCESSFUL in achieving a contract with Anthem that meets your concerns, then the Federation will so notify you that you are continuing to work under a bad contract and that you are now left with two options. You may: (1.) Continue to work under this bad contract or (2.) Terminate the contract.''

39. Beginning in January 2003, and following up on the steps Ms. Odenkirk had outlined in her December 20, 2002, letter to Federation practices, most Federation member practices sent substantively identical letters to Anthem enclosing proposed contractual changes styled as ''necessary to achieve an equitable business relationship between Anthem and this OB/GYN practice.'' The letters sought a response from Anthem within two weeks of receipt and advised that ''all responses from Anthem will be forwarded to the Federation of Physicians and Dentists for review, interpretation and consultation.'' The letters closed with a slightly adapted version of the thinly veiled threat of termination first raised in the wave of September and October 2002 third-party messenger letters sent by Federation member practices to Anthem: ''This practice truly desires to avoid any interruption of obstetrical and gynecological services to Anthem's customers. Such a circumstance can be avoided by a meaningful and productive written response from Anthem regarding the issues raised herein no later than the aforementioned date.''

40. Proceeding over the next several months, Federation member practices-in close coordination with the Federation and with some additional direct coordination among Drs. Karram, Wendel, and Metherd-negotiated contracts with Anthem that provided for a substantial increase in fees. While targeting Anthem initially, the Federation, with encouragement and assistance from the Defendant

physicians, also coordinated member groups' efforts to pressure ChoiceCare and United to renegotiate their contracts.

41. Implementing Federation members' similar strategy toward ChoiceCare, Ms. Odenkirk sent to ChoiceCare letters dated January 27–31, 2003, on behalf of 30 member practices. The letters reviewed the history of Humana's discussions with each practice, and included each practice's desired fee amounts. The letters asked for a response by February 14, 2003, and notified Humana that the practice ''still intends to forward any and all responses from HUMANA to the Federation of Physicians and Dentists for review, interpretation and consultation, as they have every right to do.'' Each letter again noted, as had the practices' third-party messenger letters sent to Humana in the fall of 2002, that a service interruption could be avoided by Humana's prompt and meaningful written response.

42. From December 2002, through March 2003, Dr. Karram's and Dr. Wendel's large OB–GYN groups spearheaded Federation member groups' attempts to renegotiate their contracts with Anthem and Humana. By a letter dated March 4, 2003, Humana proposed to Dr. Wendel's group a 30-month contract increasing fee levels substantially, in stages, over existing fees. According to the proposal, the terms were discussed and agreed upon in a telephone conversation on March 4. The next day, Dr. Wendel's office faxed Humana's proposal to Ms. Odenkirk.

43. On March 7, 2003, Ms. Odenkirk sent by e-mail and regular mail a Critical Federation Alert that had been prepared by Dr. Metherd in consultation with Drs. Karram and Wendel and edited and approved by Ms. Odenkirk and Mr. Seddon. The Alert encouraged Federation members to meet as soon as possible with Anthem and Humana to discuss proposed contract changes because the companies ''seem to legitimately desire discussions.'' Accompanying the Alert were negotiation guidelines to use in meetings, including advice to tell the health plan ''that you are seeking a fair contract both in language and reimbursements.'' The guidelines also suggested to members, in part, that

> (3.) You may explain to the health plan that you are, or will be, reviewing all of your major contracts and negotiating fairer terms for all, and that you are not just focusing on any one particular health plan. One particular concern a health plan may have is that they will be 'out front' if they were, for instance, to increase reimbursements thereby placing them at a disadvantage with their competitors in their markets.

44. As negotiations progressed, Ms. Odenkirk became active in advising groups how to proceed. Dr. Metherd also coordinated with Dr. Wendel and other physicians regarding the status of Federation members' negotiations with Anthem.

45. On April 1, 2003, Dr. Metherd e-mailed to Ms. Odenkirk and Mr. Seddon proposed additions to a draft Critical Federation Alert that Dr. Metherd had begun drafting with them in mid-March. Dr. Metherd proposed adding two paragraphs to a draft he had received from Mr. Seddon and explained the reason for his additions:

> It is becoming extremely important to somehow inform the smaller groups and solo practitioners that the large groups are not achieving favorable contracts at the expense of the small groups. * * * It's also important to somehow explain that the physicians are not going to get 170–180% of Medicare and that 30–35% is a more realistic number. Finally, from my personal discussions with the insurance companies, the members need to emphasize that all major plans are going to be looked at by the physicians. This seems to be critical for the insurance companies to hear.

46. By mid-April 2003, ChoiceCare had reached agreement with several of the larger Federation member groups. ChoiceCare continued making offers of varying fee amounts to other groups, which, in turn, forwarded them to, or discussed them with, Ms. Odenkirk to obtain her thoughts. In an April 16, 2003, e-mail, Dr. Metherd updated Ms. Odenkirk and suggested how she should advise the smaller Federation member groups regarding ChoiceCare:

> Since you know what everyone is getting, we need you to make sure that the small groups are pushing to end up in reasonable proximity (5% for example) to the larger groups in regards to reimbursements. The larger groups need to know that they can utilize [the Federation's] guidelines that we sent out on April 3 * * * as a way to pressure ChoiceCare to minimize variations in their reimbursements.
>
> Since you are the only one who, as the third party messenger, can know all the facts, it is imperative that you use the knowledge to push all of us in the same direction. * * * It is absolutely critical that one segment of the Federation here not feel that it has gained a significant advantage or suffered a significant disadvantage at another's expense * * * especially as we will soon be moving onto United, Aetna, etc.

47. By May 1, 2003, Anthem had sent to all Federation members a contract amendment raising fees over a three-year period to 120% of Medicare fees, as of July, 2003; 125%, as of January, 2004; and 130%, as of January, 2005.

48. By early May 2003, the large OB–GYN practice groups shifted their focus to United Healthcare. At a May 8th the meeting with United, called by Dr. Wendel to discuss OB–GYN fees in Cincinnati, Dr. Wendel informed United that his group had been able to negotiate new deals with the other two top payers in Cincinnati. During the meeting, Dr. Wendel threatened that his group would terminate its contract if United did not offer it a satisfactory deal. At a meeting on the same day with United, Dr. Karram conveyed a similar message on behalf of his group.

49. Dr. Metherd communicated several times in May 2003 with Drs. Karram and Wendel concerning his negotiations on fees with ChoiceCare. On May 12, 2003, Dr. Metherd responded to ChoiceCare and attempted to leverage Federation members' contract renegotiations with Anthem and suggested that ChoiceCare would face a boycott if it did not meet his and other OB–GYNs' fee demands.

50. On May 11, 2003, Dr. Metherd sent an e-mail to Drs. Karram, Wendel:

> As per our discussions on Friday [May 9th], I think we need to do some 'campaigning' so to speak. We need to educate the members and encourage them to do four things.
>
> (1.) They need to accept the contract from Anthem. While not perfect, it's actually pretty good and Lynda [Odenkirk] also feels the same based on my discussions with her this week. Apparently she is quite surprised that we have done as well as we have. * * *
>
> (2.) They need to negotiate with ChoiceCare. * * *
>
> (3.) Everyone needs to do the above so we can all move onto United next especially given the promising discussions that you have just had.
>
> (4.) Finally, membership dues for the Federation are here and we need to convince the members that this is worth doing again this next year. * * *

51. Prompted by Dr. Metherd, on May 16, 2003, Ms. Odenkirk sent to essentially all Cincinnati Federation members a ''Federation Alert—Update.'' Ms. Odenkirk's Alert opined that the revised Anthem contract was ''as good as it's going to get at this point in time'' and suggesting it was ready to be signed. Ms. Odenkirk's Federation Alert also posed the Anthem contract to Federation members as a ''benchmark to follow'' when negotiating with other comparable health plans.

52. On May 20, 2003, Dr. Metherd sent to Federation members a proposal to endorse a ''large insurance company'' that had recently provided a contract with ''physician-friendly'' changes. Dr. Metherd explained that the other insurers could also be endorsed if they

offered similar contracts and expressed the hope that ''this would then offer all companies an incentive to work with member physicians to achieve physician-friendly agreements.'' The proposal also noted, ''This concept has been reviewed and approved by the Federation leadership.''

53. At a May 28, 2003, meeting with United representatives, Dr. Metherd threatened to terminate his contract with United if it did not offer him satisfactory terms. After the meeting, he sent an e-mail to a United representative to emphasize the need for United to ''offer an acceptable contract to all members'' and complete fee negotiations promptly if it wished to participate in the ''endorsement'' program that had also been discussed at the meeting.

54. By May 30, 2003, United had met with about six Federation member groups. Each group conveyed that they wanted essentially the same deal and would terminate their contracts if they did not get it.

55. On May 29, 2003, Dr. Metherd sent an e-mail to all Federation members requesting their attention to ''some extremely important issues,'' including the need for doctors to keep the Federation informed of their negotiation status with various insurers. On May 29, Dr. Karram e-mailed Ms. Odenkirk and stated, ''I agree with Warren. We need to get everyone moving faster and to become more persistent otherwise they will not get increases in 03. I am sure that is what [ChoiceCare] is doing. Just think of the money they will save if they keep delaying people till 04.'' Dr. Karram's e-mail also asked Ms. Odenkirk: ''Are we ready to move on to the next player. I think that is Medical Mutual of Ohio.''

56. During June and July 2003, Ms. Odenkirk continued to advise Federation members concerning their contract negotiations with ChoiceCare, United, and, to a lesser extent, Anthem.

57. By letters dated June 13, 2003, Ms. Odenkirk sent to United proposed contractual amendments for nearly all Federation member groups. On June 17, 2003, she apprised the groups of the communications to United on their behalf. In a July 9, 2003, Federation Alert, Ms. Odenkirk suggested that all Federation members persist in negotiations with United and let United ''know that you have been able to achieve a significantly better agreement with one of their competitors, and are currently in discussions with another competitor, so if they want to remain competitive they need to answer you.'' She reiterated essentially the same message to Federation members in an August 1, 2003, Critical Federation Alert. By November 24, 2003, United had signed contracts, calling for substantially increased reimbursements, with 33 OB–GYN practice groups or solo practitioners, representing the vast majority of Federation member physicians.

58. On June 23, 2003, ChoiceCare representatives met with Drs. Karram, Metherd, and Wendel to learn more about the '' 'endorsement campaign' '' Federation OB–GYNs were planning. Dr. Metherd described the endorsement as both public and private support of those managed-care organizations that had met the OB–GYNs' established minimum fee levels. No physician articulated any criterion for being included in the endorsement other than meeting their fee demands, despite repeated questions about any other criteria. All three physicians confirmed that all physicians affiliated with the Federation would have to receive fees at or above the fee threshold to receive the endorsement.

59. On August 10, 2003, Dr. Metherd sent an e-mail survey to Federation member practices, inquiring as to the status of negotiations with their top three insurance companies. On September 12, 2003, Dr. Metherd faxed the results of his August 10 e-mail survey to Ms. Odenkirk. The results included the status of negotiations with their top three insurance companies for each of the 31 (out of 43) practices that responded.

60. In a September 18, 2003, memo addressed to Cincinnati area members, Ms. Odenkirk advised members that

> Cincinnati OB/GYNs have been discussing their issues with several health plans and have been reaching successful outcomes. Therefore, I continue to encourage you to hav[e] dialogues with various health plans. I am in the process [o]f reviewing the Aetna and Medical Mutual of Ohio ('MMO') agreements, so if you're interested in opening a dialogue with either of these companies, please feel free to use the enclosed sample third party letters.

The enclosed sample letters, addressed to Aetna and Medical Mutual, appointed the Federation as the practice's third-party messenger, raised concerns about contract language and fees, and contained the usual language threatening contract termination.

61. At an October 7, 2003, Federation membership meeting, which Ms. Odenkirk attended, both Dr. Wendel and Dr. Metherd announced to competing physicians that they had terminated their respective unfavorable contracts with Aetna because of Aetna's refusal to discuss the contracts.

62. In an October 17, 2003, Critical Federation Alert, Ms. Odenkirk updated members on the status of negotiations with Aetna and Medical Mutual. The Alert evaluated Aetna's new fee schedule as ''NOT 'reasonable for the Cincinnati market' '' and gave Federation members specific instructions on how to respond to Aetna's and Medical Mutual's fee proposals.

63. On October 21, 2003, Dr. Metherd e-mailed the entire Cincinnati membership to inform them that his practice had terminated Aetna. Although written under the pretense only of informing OB–GYNs not to refer Aetna patients to him, Dr. Metherd prefaced his message with an account of his reason for termination, decrying Aetna's fees as ''significantly lower than the current market level in the Cincinnati-Northern Kentucky area'' and Aetna's refusal to renegotiate his contract.

64. On October 29, 2003, Dr. Metherd e-mailed Lynda Odenkirk, reporting on strategizing at a meeting that day of the recently formed local Federation Chapter Executive Committee, with copies to the Executive Committee, which included Drs. Karram and Wendel:

> The meeting went well * * * we're still waiting to see whether and how Aetna responds to Seven Hills. Thus far no one else is getting any attention from them and, apparently, they are not being all that friendly with Seven Hills. We'll just have to wait and see * * * all of us at the meeting are aware of the goals of the entire Federation and will, hopefully, not forget them. [Dr. Wendel] and I are hoping everyone will react to Aetna as we had to [terminating their contracts] * * * time will tell. As for endorsing United * * * the message back to them is that they still haven't provided 'fair and equitable' contracting (i.e. the language issues) and that they will receive no endorsement as a result. They will be told this by Dr. Karram, and, that, if they do better in 2005 when we come back to them, then, perhaps they will be endorsed. (all ellipses in original)

65. In an October 29, 2003, memo to Cincinnati area members, Ms. Odenkirk noted that a new fee schedule from Cigna represented a reduction in rates, and, in her opinion, did not meet the notice requirements in the members' contracts with Cigna. Ms. Odenkirk's memo included an attached sample letter, addressed to Cigna, which not only raised the concerns noted in her memo, but also appointed the Federation as the practice's third-party messenger.

66. On November 5, 2003, Ms. Odenkirk prepared a sample letter for Federation members to send Aetna

regarding its revised fee schedule. The sample letter advised Aetna that the sender had ''recently negotiated far better reimbursements with several of your competitors, which has significantly changed the Cincinnati market. Therefore we find that your fee schedule is not reasonable for this area.''

67. Dr. Metherd commented to Ms. Odenkirk on her sample letter to Aetna, in a November 5, 2003, e-mail, which he copied to the Cincinnati Chapter Executive Committee:

> The letter looks good * * * Both [another physician] and [Dr.] Wendel are making overtures to Aetna as I did in order to judge Aetna's reaction. Before we put this out there, let's see what they hear as well. * * * If Aetna responds to [another physician] and [Dr.] Wendel with a willingness to consider a proposal as they did with me, then we can encourage current Aetna providers (and those of us that just recently terminated) to renew contact with them via both phone and your letter.

68. On November 7, 2003, Lynda Odenkirk e-mailed a Critical Federation Alert updating Federation members on the status of negotiations with Medical Mutual, Cigna, and Aetna. Ms. Odenkirk's Alert reported about ''multiple terminations of the Aetna agreement by Cincinnati-Northern Kentucky OB/GYN physicians'' and that Aetna had now indicated a willingness to negotiate with area OB–GYNs. She strongly encouraged Federation members—even those that had noticed termination of their Aetna contracts—to negotiate with Aetna. Ms. Odenkirk also advised Federation members that Medical Mutual had been advised that part of its fee schedule offer was ''unacceptable.''

69. On November 17, 2003, Medical Mutual mailed proposed agreements offering substantially increased fees to nearly all Federation member practices. On November 19, 2003, Ms. Odenkirk e-mailed a Critical Federation Alert that informed Federation members that Medical Mutual's new ''proposal is, for all points and purposes, fair and reasonable, as it is now in line with agreements you've recently negotiated with other companies.'' By early 2004, most of the Federation member practices had signed and returned the contracts.

70. Ms. Odenkirk's November 19, 2003, Critical Federation Alert also gave Federation members specific instructions to persist in negotiations with Aetna, noting that its fee schedule was ''considerably below'' current levels. In the same November 19, 2003, Critical Federation Alert, Ms. Odenkirk instructed members that ''[b]y now you should have sent your third party letter to CIGNA'' and added that members should use with Cigna all of the points mentioned concerning Aetna. The Alert also included a general comment regarding the smaller insurers in the area, such as Aetna, Cigna, and Medical Mutual: ''Consequently, you should make these calls and make it plainly known to each that you will NOT settle for anything less than a 'fair and equitable' contract from each. Moreover, you are in such a position with the bigger companies that you NO LONGER have to accept UNFAIR contracts from these smaller companies.''

71. Coordinated by the Federation, using the Anthem agreement as a benchmark, as Ms. Odenkirk had urged, and using threats of terminating their services, Federation members were able to force ChoiceCare, United, and Medical Mutual to offer all Federation OB–GYN practices new contracts at fees and terms substantially equivalent to those in their Anthem contracts.

72. Most of the contracts between Federation member OB–GYNs and the major insurers run through, at least, the end of 2005. The Federation continues to have Cincinnati-area member OB–GYNs. Although some OB–GYNs have discontinued their membership in the Federation, the Cincinnati chapter of the Federation continues to exist and is available to coordinate another round of collectively negotiated contracts when the current contracts approach expiration.

## VIII. Violation Alleged

73. Beginning at least as early as April, 2002, and continuing to date, Defendants and their conspirators have engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. This offense is likely to continue and recur unless the relief requested is granted.

74. The combination and conspiracy consisted of an understanding and concert of action among Defendants and their conspirators that the Federation's Cincinnati Chapter members would coordinate their negotiations with health care insurance companies operating in the Cincinnati area to enable the collective negotiation of higher fees from these health care insurers.

75. For the purpose of forming and effectuating this combination and conspiracy, Defendants and their conspirators did the following things, among others:

(a) Successfully recruited as members of the Federation a high percentage of competing OB–GYNs practicing in the Cincinnati area;

(b) Designated the Federation to represent most Federation members in their fee negotiations with Anthem, Humana, United, Medical Mutual, Aetna, and Cigna;

(c) Reached an understanding to coordinate their negotiations through the Federation; and

(d) In coordination with the Federation demanded new, substantially higher fees from each insurer while threatening termination of their contracts if satisfactory results were not obtained.

76. This combination and conspiracy has had the following effects, among others:

(a) Price competition among independent and competing OB–GYNs in the Cincinnati area who became Federation members has been restrained;

(b) Health care insurance companies in the Cincinnati area and their subscribers have been denied the benefits of free and open competition in the purchase of OB–GYN services in the Cincinnati area; and

(c) Self insured employers and their employees have paid significantly higher prices for OB–GYN services in the Cincinnati area than they would have paid in the absence of this restraint of trade.

## IX. Request for Relief

77. To remedy these illegal acts, the United States of America requests that the Court:

(a) Adjudge and decree that Defendants entered into an unlawful contract, combination, or conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. 1;

(b) Enjoin the Defendant Federation and its members, officers, agents, servants, employees and attorneys and their successors, the individual physician Defendants, and all other persons acting or claiming to act in active concert or participation with one or more of them, from continuing, maintaining, or renewing in any manner, directly or indirectly, the conduct alleged herein or from engaging in any other conduct, combination, conspiracy, agreement, understanding, plan, program, or other arrangement having the same effect as the alleged violations or that otherwise violates Section 1 of the Sherman Act, 15 U.S.C. 1, through price fixing of medical services, collective negotiation on behalf of competing independent physicians or physician groups, or group boycotts of the purchasers of health care services;

(c) Enjoin the Federation and any Federation representative from representing or providing consulting services of any kind to any medical practice group, or any self-employed physician; and

(d) Award to plaintiff its costs of this action and such other and further relief as may be appropriate and as the Court may deem just and proper.

Dated: June 24, 2005.

For Plaintiff United States of America:

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J. Bruce McDonald,

*Deputy Assistant Attorney General, Antitrust Division.*

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**Certificate of Service**

I hereby certify that on June 24, 2005, copies of the foregoing Complaint were served by facsimile and first-class regular U.S. mail, postage prepaid, to:

Michael E. DeFrank, Esq., Hemmer Pangburn DeFrank PLLC, Suite 200, 250 Grandview Drive, Fort Mitchell, KY 41017, Fax: 859–344–1188, Attorney for Defendant Dr. James Wendel.

G. Jack Donson, Jr., Esq., Taft, Stettinius & Hollander, 425 Walnut Street, Suite 1800, Cincinnati, Ohio 45202, Fax: 513–381–0205, Attorney for Defendant Dr. Michael Karram.

Jeffrey M. Johnston, Esq., 37 North Orange Avenue, Suite 500, Orlando, FL 32801, Fax: 407–926–2452, Attorney for Defendant Dr. Warren Metherd.

Paul J. Torzilli,

*Attorney, United States Department of Justice.*

**In the United States District Court for the Southern District of Ohio Western Division**

United States of America, Plaintiff, vs. Federation of Physicians and Dentists, Lynda Odenkirk, *et al.,* Defendants.

[Case No. 1:05–cv–431, Hon. Sandra S. Beckwith, C.J., Hon. Timothy S. Hogan, M.J.]

**[Proposed] Final Judgment As to the Federation of Physicians and Dentists and Lynda Odenkirk**

*Whereas,* Plaintiff, the United States of America, filed its Complaint on June 24, 2005, alleging that Defendant Federation of Physicians and Dentists (''Defendant FPD''), and Defendant Lynda Odenkirk (''Defendant Odenkirk'') (collectively ''the Federation Defendants'') participated in agreements in violation of section 1 of the Sherman Act;

*Whereas,* Plaintiff and the Federation Defendants, by their counsel, have consented to the Court's entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against, or any admission by the Federation Defendants that the law has been violated as alleged in the Complaint, or that the facts alleged in such Complaint, other than the jurisdictional facts, and the allegations admitted in the Federation Defendants' Answers, are true;

*Whereas,* the essence of this Final Judgment is to restore competition, as alleged in the Complaint, and to restrain the Federation Defendants from participating in any unlawful conspiracy to increase fees for physician services;

*And Whereas,* Plaintiff United States requires the Federation Defendants to be enjoined from rendering services to, or representing, any independent physician pertaining to such physician's dealing with any payer, for the purpose of preventing future violations of Section 1 of the Sherman Act.

*Now Therefore,* without trial or adjudication of any issue of law or fact, and upon consent of Plaintiff and the Federation Defendants, it is Ordered, Adjudged and Decreed:

**I. Jurisdiction**

This Court has jurisdiction over the subject matter of and over the United States and the Federation Defendants in this action. The Complaint states a claim upon which relief may be granted against the Federation Defendants under Section 1 of the Sherman Act, 15 U.S.C. 1.

**II. Definitions**

As used in this Final Judgment:

(A) ''Communicate'' means to discuss, disclose, transfer, disseminate, or exchange information or opinion, formally or informally, in any manner;

(B) ''Defendant FPD'' means the Federation of Physicians and Dentists, its successors and assigns; its subsidiaries, divisions, groups, partnerships and joint ventures; and each entity over which it has control; and their directors, officers, managers, agents, representatives, and employees.

(C) ''Defendant Odenkirk'' means Lynda Odenkirk, an employee of Defendant FPD;

(D) ''Delaware Decree'' means the final judgment entered in *United States* v. *Federation of Physicians and Dentists, Inc.,* CA 98–475 JJF (D. Del., judgment entered Nov. 6, 2002).

(E) ''The Federation Defendants'' means Defendant FPD and Defendant Odenkirk;

(F) ''Independent physician'' means any physician or physicians in private solo or group medical practice, regardless of whether such person is a member of the Federation of Physicians and Dentists. For purposes of this Final Judgment, an ''independent physician'' does not include physicians or other medical professional employees not in private practice or who belong to a recognized or certified bargaining unit that is affiliated with the Federation of Physicians and Dentists;

(G) ''Messenger'' means, in relation to the Federation Defendants, communicating to a payer any information the Federation Defendants have received from an independent physician, or communicating to any independent physician any information the Federation Defendants receive from any payer;

(H) ''Payer'' means any person that purchases or pays for all or part of a physician's services for itself or any other person and includes but is not limited to individuals, health insurance companies, health maintenance organizations, preferred provider organizations, and employers;

(I) ''Person'' means any natural person, corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute, governmental unit, or other legal entity;

(J) ''Recognized or certified bargaining unit'' means a group of physicians that have been recognized or certified pursuant to state or federal law to bargain collectively with their common employer over wages, terms, and conditions of employment.

**III. Applicability**

(A) This Final Judgment applies to the Federation Defendants and to any person, including any independent physician, in active concert or participation with the Federation Defendants, who receives actual notice of this Final Judgment by personal service or otherwise.

(B) Defendant Odenkirk shall be bound by the provisions of Section IV of this Final Judgment only while she is an employee or agent of, or acting in active concert with, Defendant FPD.

(C) This Final Judgment shall not apply to the conduct of any physician or other medical professional employee who belongs to a recognized or certified bargaining unit affiliated with Defendant FPD, only to the extent such conduct reasonably relates to the lawful activities of the recognized or certified bargaining unit.

(D) Nothing contained in this Final Judgment is intended to suggest or imply that any provision herein is or has been created or intended for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

(E) Nothing contained in this Final Judgment is intended to suggest or imply that Defendant FPD's obligations under the Delaware Decree have been diminished, limited, curtailed, or otherwise modified.

(F) In the event of any conflict or inconsistency between Section IV of this Final Judgment, and sections IV or V of the Delaware Decree, this Final Judgment controls.

**IV. Prohibited Conduct**

The Federation Defendants are enjoined from, in any manner, directly or indirectly:

(A) Providing, or attempting to provide, any services to any independent physician regarding such physician's actual, possible, or contemplated negotiation, contracting, or other dealings with any payer;

(B) Acting, or attempting to act, in a representative capacity, including as a messenger or in dispute resolution (such as arbitration), for any independent physician with any payer;

(C) Reviewing or analyzing, or attempting to review or analyze, for any independent physician, any proposed or actual contract or contract term between such physician and any payer;

(D) Communicating, or attempting to communicate, with any independent physician about that physician's, or any other physician's, negotiating, contracting, or participating status with any payer, or, except as consistent with section V(A), about any proposed or actual contract or contract term between any independent physician and any payer;

(E) Responding, or attempting to respond, to any question or request initiated by any payer, except to state that this Final Judgment prohibits such response; and

(F) Training or educating, or attempting to train or educate, any independent physician in any aspect of contracting or negotiating with any payer, including but not limited to, contractual language and interpretation thereof, methodologies of payment or reimbursement by any payer for such physician's services, and dispute resolution such as arbitration, except that the Federation Defendants may, provided they do not violate sections IV(A) through IV(E) of this Final Judgment, (1) Speak on general topics (including contracting), but only when invited to do so as part of a regularly scheduled medical educational seminar offering continuing medical education credit and only if at least five-days advance written notice has been provided to Plaintiff and any handouts, outlines, presentation slides, notes or other documents relating to what was said by the Federation Defendants are retained by the Defendant FPD for possible inspection by Plaintiff; (2) publish articles on general topics (including contracting) in a regularly disseminated newsletter; and (3) provide education to independent physicians regarding the regulatory structure (including legislative developments) of workers compensation, Medicaid, and Medicare, except Medicare Advantage.

**V. Permitted Conduct**

(A) The Federation Defendants may engage in activities that fall within the safety zone set forth in Statement 6 of the 1996 Statements of Antitrust Enforcement Policy in Health Care, 4 Trade Reg. Rep. (CCH) ¶ 13,153.

(B) Nothing in this Final Judgment shall prohibit the Federation Defendants, or any one or more of Defendant FPD's members from:

(1) Engaging or participating in lawful union organizational efforts and activities;

(2) Advocating or discussing, in accordance with the doctrine established in *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.,* 365 U.S. 127 (1961), *United Mine Workers* v. *Pennington,* 381 U.S. 657 (1965), and their progeny, legislative, judicial, or regulatory actions, or other governmental policies or actions; and

(3) Exercising rights protected by the National Labor Relations Act or any state collective bargaining laws.

(C) Nothing in this Final Judgment shall prohibit:

(1) Any independent physician to whom this Final Judgment applies from engaging solely with other members or employees of such physician's bona fide solo practice or practice group in activities otherwise prohibited herein;

(2) Any independent physician to whom this Final Judgment applies from acting alone in the exercise of his or her own independent business judgment, from choosing the payer or payers with which to contract, and/or refusing to enter into discussions or negotiations with any payer.

(D) Nothing in this Final Judgment shall prohibit or impair the right of the Federation Defendants (or any affiliate thereof) as a labor organization from communicating with other labor organizations concerning the identity of payers who are considered pro- or anti-union, provided such activity is consistent with § 8(b)(4) of the National Labor Relations Act, 29 U.S.C. 158(b)(4), and to the extent it does not constitute a secondary boycott.

**VI. Compliance**

To facilitate compliance with this Final Judgment, Defendant FPD shall:

(A) Distribute within 60 days from the entry of this Final Judgment, a copy of this Final Judgment and the Competitive Impact Statement to:

(1) All of Defendant FPD's directors, officers, managers, agents, employees, and representatives, who provide or have provided, or supervise or have supervised the provision of, services to independent physicians; and

(2) All of Defendant FPD's members who are independent physicians.

(B) Distribute as soon as practicable a copy of this Final Judgment and the Competitive Impact Statement to:

(1) Any person who succeeds to a position with Defendant FPD described in section VI(A), in no event shall such distribution occur more than fifteen (15) days later than such person assumes such position; and

(2) Any independent physician who becomes a member of Defendant FPD, in no event shall such distribution occur more than fifteen (15) days later than such physician becomes a member.

(C) Conduct an annual seminar explaining to all of Defendant FPD's directors, officers, managers, agents, employees, and representatives, who provide or have provided, or supervise or have supervised the provision of, services to independent physicians, the antitrust principles applicable to their

work, the restrictions contained in this Final Judgment, and the implications of violating the Final Judgment;

(D) Maintain an internal mechanism by which questions about the application of the antitrust laws and this Final Judgment from any of Defendant FPD's directors, officers, managers, agents, employees, and representatives, who provide or have provided, or supervise or have supervised the provision of, services to independent physicians, can be answered by counsel as the need arises;

(E) Obtain a certificate from each person to whom Defendant FPD must distribute this Final Judgment:

(1) Pursuant to section VI(A), within 120 days from the entry of this Final Judgment; and

(2) Pursuant to section VI(B), as soon as practicable but in no event more than 120 days from the date of such distribution;

The certificate shall state that such person has received, read, and understands this Final Judgment, and that such person has been advised and understands that such person must comply with this Final Judgment and may be held in civil or criminal contempt for failing to do so. Defendant FPD shall retain each certificate for the duration of this Final Judgment; and

(F) Maintain for inspection by Plaintiff a record of recipients to whom this Final Judgment, and Competitive Impact Statement have been distributed and from whom written certifications, pursuant to section VI(E), have been received.

**VII. Certification**

(A) Within 75 days after entry of this Final Judgment, Defendant FPD shall certify to Plaintiff that it has provided a copy of this Final Judgment to all persons described in VI(A) of this Final Judgment.

(B) For a period of ten (10) years following the date of entry of this Final Judgment, the Federation Defendants shall separately certify to Plaintiff annually on the anniversary date of the entry of this Final Judgment that each, respectively, and any agents if applicable, has complied with the provisions of this Final Judgment.

**VIII. Compliance Inspection**

(A) For the purposes of determining or securing compliance with this Final Judgment or determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to the Federation Defendants, be permitted:

(1) Access during the Federation Defendants' regular business hours to inspect and copy, or, at the United States' option, to require that the Federation Defendants provide copies of all books, ledgers, accounts, records and documents in their possession, custody, or control, relating to any matters contained in this Final Judgment;

(2) To interview, either informally or on the record, Defendant Odenkirk or any of Defendant FPD's officers, directors, employees, agents, managers, and representatives, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by the Federation Defendants; and

(3) To obtain from the Federation Defendants written reports or responses to written interrogatories, under oath if requested, relating to any matters contained in this Final Judgment.

(B) The provisions of section VIII(A) shall not apply to any member of Defendant FPD or to any such member's group practice.

(C) No information or documents obtained by the means provided in this Section shall be divulged by Plaintiff to any person other than authorized representatives of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at any time a Federation Defendant furnishes information or documents to the United States, the Federation Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give the Federation Defendant ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which such Defendant is not a party.

(E) The Federation Defendants have the right to representation by counsel in any proceeding under this Section.

**IX. Retention of Jurisdiction**

This Court retains jurisdiction to enable any party to this Final Judgment, to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

**X. Expiration of Final Judgment**

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

**XI. Public Interest Determination**

The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. section 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

Dated:_____, 2007.

Sandra S. Beckwith, Chief Judge

*United States District Court.*

**In the United States District Court for the Southern District of Ohio Western Division**

United States Of America, Plaintiff, vs. Federation of Physicians and Dentists, *et al.,* Defendants.

Case No. 1:05–CV–431, Chief Judge Sandra S. Beckwith, Magistrate Judge Thomas S, Hogan.

**Plaintiff's Competitive Impact Statement Concerning the Proposed Final Judgment As to the Federation of Physicians and Dentists and Lynda Odenkirk**

In this civil antitrust action, the United States of America, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. section 16(b)–(h), files this Competitive Impact Statement concerning the proposed Final Judgment as to the Federation of Physicians and Dentists and Lynda Odenkirk (''Final Judgment'') that the parties have submitted for entry.

**I. Nature and Purpose of the Proceeding**

The United States filed this civil antitrust Complaint on June 24, 2005, in the United States District Court for the Southern District of Ohio, Western Division, alleging that the Federation of

Physicians and Dentists (''Federation'') and Federation employee Lynda Odenkirk, along with physician co-defendants Drs. Warren Metherd, Michael Karram, and James Wendel coordinated a conspiracy among about 120 obstetrician-gynecologist physicians (''OB–GYNs'') practicing in greater Cincinnati, Ohio, that unreasonably restrained interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. section 1. As alleged in the Complaint, the conspiracy artificially raised fees paid by health care insurers to Federation members in the Cincinnati area, which are ultimately borne by employers and their employees. The physician defendants agreed to a judgment that was filed concurrently with the Complaint and eventually entered by this Court on November 14, 2005, after determining, under the APPA, that the decree was in the public interest. (Dkt. Entry #36).

The plaintiff and the remaining defendants, the Federation and Ms. Odenkirk (the ''Federation defendants''), have stipulated that the proposed Final Judgment may be entered after compliance with the APPA and upon the Court's determination that it serves the public interest. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment, and to punish violations of it.

## II. Description of the Events Giving Rise to the Alleged Violation of the Antitrust Laws

The Complaint in this action includes the following allegations. The Federation is a membership organization of physicians and dentists, headquartered in Tallahassee, Florida. The Federation's membership includes economically independent physician groups in private practice in many states, including Ohio. The Federation has offered such member physicians assistance in negotiating fees and other terms in their contracts with health care insurers.

In spring 2002, several Cincinnati OB–GYNs became interested in joining the Federation to negotiate higher fees from health care insurers. The physician defendants assisted the Federation in recruiting other Cincinnati-area OB–GYNs as members. By June 2002, the membership of the Federation had grown to include a large majority of competing OB–GYN physicians in the Cincinnati area.

With substantial assistance from the physician defendants and Ms. Odenkirk, the Federation coordinated and helped implement its members' concerted demands to insurers for higher fees and related terms, accompanied by threats of contract terminations. From September 2002 through the fall of 2003, Ms. Odenkirk communicated with the physician defendants and other Cincinnati-area OB–GYN Federation members to coordinate their contract negotiations with health care insurers. Along with the physician defendants, Ms. Odenkirk developed a strategy to intensify Federation member physicians' pressure on health care insurers to renegotiate their contracts, including informing member physicians about the status of competing member groups' negotiations and taking steps to coordinate their negotiations.

The agreement coordinated by the Federation defendants forced Cincinnati-area health care insurers to raise fees paid to Federation member OB–GYNs above the levels that would likely have resulted if Federation members had negotiated competitively with those insurers. As a result of the conspirators' conduct, the three largest Cincinnati-area health care insurers each were forced to increase fees paid to most Federation members OB–GYNs by approximately 15–20% starting July 1, 2003, followed by cumulative increases of approximately 20–25% starting January 1, 2004, and approximately 25–30% effective January 1, 2005. Federation member OB–GYNs' conduct, coordinated by the Federation defendants, also caused other insurers to raise the fees they paid to Federation members.

## III. Explanation of the Proposed Final Judgment

### *A. Relief To Be Obtained*

The proposed Final Judgment is designed to enjoin the Federation defendants from taking future actions that could facilitate private-practice physicians' coordination of their dealings with payers. The central objective of the injunctive provisions, therefore, is to prohibit the Federation from being involved anywhere in the country in its private-practice members' negotiating or contracting with health insurers or other payers for health care services.

The proposed Final Judgment prohibits the Federation defendants from providing any services to any physician in private practice regarding such physician's negotiation, contracting, or other dealings with any payer. The proposed Final Judgment also prohibits the Federation defendants from (1) representing (including as a messenger) any private-practice physician with any payer; (2) reviewing or analyzing, for any such physician, any proposed or actual contract or contract term between such physician and any payer; and (3) communicating with any independent physician about that physician's, or any other physician's, negotiating, contracting, or participating status with any payer. Communications by the Federation defendants about any proposed or actual contract or contract term between any independent physician and any payer are also generally prohibited. In addition, the proposed Final Judgment enjoins the Federation defendants from responding to any question or request initiated by any payer, except to state that the Final Judgment prohibits such a response. Finally, the proposed Final Judgment generally prohibits the Federation defendants from training or educating, or attempting to train or educate, any independent physician in any aspect of contracting or negotiating with any payer.

The only exceptions to these broad prohibitions cover conduct that neither threatens competitive harm nor undermines the clarity of the prohibitions, which the Department will enforce aggressively. One exception limits the prohibition on the Federation defendants from training or educating, or attempting to train or educate, any independent physician in any aspect of contracting or negotiating with any payer, provided they do not violate the other injunctive provisions of the proposed Final Judgment, enabling defendants to (1) speak on general topics (including contracting), but only when invited to do so as part of a regularly scheduled medical educational seminar offering continuing medical education credit, advance written notice has been given to Plaintiff, and documents relating to what was said by the Federation Defendants are retained by them for possible inspection by the United States; (2) publish articles on general topics (including contracting) in a regularly disseminated newsletter; and (3) provide education to independent physicians regarding the regulatory structure (including legislative developments) of workers compensation, Medicaid, and Medicare, except Medicare Advantage.

In a section titled ''permitted conduct,'' the proposed decree permits the Federation defendants to engage in activities involving physician participation in written fee surveys that are covered by the ''safety zone'' under Statement 6 of the 1996 Statements of Antitrust Enforcement Policy in Health

Care, 4 Trade Reg. Rep. (CCH) ¶ 13,153, which addresses provider participation in exchanges of price and cost information. The proposed Final Judgment also clarifies that it does not prohibit the Federation defendants or Federation members from engaging in lawful union organizational efforts and activities. The proposed Final Judgment also allows the Federation defendants or Federation members to petition governmental entities in accordance with doctrine established in *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.,* 365 U.S. 127 (1961), and its progeny. In addition, the decree permits Federation physician members to choose independently, or solely with other members or employees of such member's bona fide solo practice or practice groups, health insurers with which to contract, and/or to refuse to enter into discussion or negotiations with any health care payer.

To promote compliance with the decree, the proposed Final Judgment also requires the Federation to provide Federation agents and members in private practice with copies of the Final Judgment and this Competitive Impact Statement and to institute mechanisms to facilitate Federation agents' compliance. For a period of ten years following the date of entry of the Final Judgment, the Federation defendants separately must certify annually to the United States whether they have complied with the provisions of the Final Judgment.

The proposed Final Judgment clarifies that it does not alter the Federation's obligations under the decree entered by the district court in Delaware in a prior, similar case against the Federation, *United States* v. *Federation of Physicians and Dentists, Inc.,* CA 98–475 JJF (D. Del., judgment entered Nov. 6, 2002), and that, if there is any conflict between the injunctive provisions of the proposed Final Judgment and the injunctive provisions or conduct permitted by the Delaware decree, the proposed Final Judgment controls. The proposed Final Judgment embodies more stringent relief than that provided by the Delaware decree because it prohibits the Federation from, for example, representing physicians in their dealings with payers as a messenger and from reviewing and analyzing physician contracts with any payer, activities that the Delaware decree had permitted in limited circumstances.

*B. Anticipated Effects on Competition of the Relief To Be Obtained*

The proposed Final Judgment attempts to prevent recurrence of the violation and restore lost competition, as alleged in the Complaint. The essential relief imposed by the proposed Final Judgment—prohibiting the Federation's involvement in its private-practice members' contracting with payers—will eliminate a substantial restraint on price competition among competing OB–GYNs in Cincinnati and elsewhere. Consequently, payers in the Cincinnati area and elsewhere seeking to develop or maintain a network of OB–GYNs will benefit from competition unimpeded by the collusive behavior of the Federation and its members. Employers arranging for delivery of physician services through insurer networks and members of such health care plans will similarly benefit from the plans' ability to negotiate for OB–GYN services on competitive terms, rather than on the collusively inflated fees that resulted from the Federation's coordination of the negotiations conducted with payers by the majority of Cincinnati-area OB–GYN physicians.

**IV. Remedies Available to Potential Private Litigants Damaged By the Alleged Violation if the Proposed Final Judgment is Entered**

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment also would have no *prima facie* effect in any subsequent private lawsuits that may be brought against the Federation defendants involving their alleged conduct in this action.

**V. Procedures Available for Modification of the Proposed Final Judgment**

The parties have stipulated that the proposed Final Judgment may be entered by this Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon this Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the latter of the date of publication of this Competitive Impact Statement in the **Federal Register** or the last date of publication in a newspaper of notice of the filing of the proposed Final Judgment and this Competitive Impact Statement. The United States will evaluate and respond to the comments received during this period, and it remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with this Court and published in the **Federal Register**. Written comments should be submitted to: Joseph Miller, Acting Chief, Litigation I Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 4000, Washington, DC 20530.

The proposed Final Judgment provides that this Court retains jurisdiction over this action, and the parties may apply to this Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

**VI. Alternatives to the Proposed Final Judgment Actually Considered by The United States**

The United States considered rejecting the Federation's proposal that the Final Judgment contain exceptions permitting the Federation to engage in certain educational and training activities, and thus continuing to litigate the claims in the Complaint. The exceptions, however, are narrow and do not undermine the effectiveness of the decree. The United States decided, therefore, that the Final Judgment provides it with substantially all of the relief it could have expected to achieve in Court and did not warrant the delay, risks, and costs of further litigation.

**VII. Standard of Review Under the APPA of the Proposed Final Judgment**

After the sixty (60)-day comment period and compliance with the provisions of the APPA, if the United States has not withdrawn its consent to the proposed Final Judgment, it will move for entry of the proposed Final Judgment in accordance with the APPA. Persons considering commenting on the proposed Final Judgment are advised that, in determining, under the APPA, whether entry of the proposed Final Judgment is ''in the public interest,'' the Court shall consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies

actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A)–(B).

As these statutory provisions suggest, the APPA requires the Court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995). In determining whether the proposed judgment is in the public interest, ''[n]othing in [the APPA] shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene,'' 15 U.S.C. 16(e)(2), ''which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Congo Rec. 24,598 (1973) (statement of Senator Tunney). This caveat is also consistent with the deferential review of consent decrees under the APPA. See *United States* v. *Microsoft*, 56 F.3d at 1460–62; *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988); *United States* v. *SBC Commc'ns, Inc.*, Nos. 05–2102 and 05–2103, 2007 WL 1020746, at *9 (D.D.C. Mar. 29, 2007) (confirming that 2004 amendments to the APPA ''effected minimal changes[] and that the[ e] Court's scope of review remains sharply proscribed by precedent and the nature of [APPA] proceedings.'').

**VIII. Determinative Documents**

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Respectfully submitted,

Dated: July 2, 2007.

For Plaintiff United States of America:

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Gerald F. Kaminski

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**Certificate of Service**

I hereby certify that on July 2, 2007, I electronically filed the foregoing Plaintiff's Competitive Impact Statement Concerning the Proposed Final Judgment as to The Federation of Physicians and Dentists and Lynda Odenkirk with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participants:

David M. Cook, Esq. of Cook, Portune & Logothetis (Cincinnati) (as Trial Attorney for Defendant Federation of Physicians and Dentists, and Trial Attorney for Defendant Lynda Odenkirk), and

Kimberly L. King, Esq. of Hayward & Grant, P.A. (Tallahassee, FL) (as Attorney for Defendant Federation of Physicians and Dentists, and Attorney for Defendant Lynda Odenkirk).

Paul Torzilli,

*Attorney, United States Department of Justice.*

[FR Doc. 07–3421 Filed 7–17–07; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

**[OMB Number 1121–0240]**

### Agency Information Collection Activities: Revision of a Currently Approved Collection; Comments Requested

**ACTION:** 30-day notice of information collection under review: 2007 Survey of State and Local Law Enforcement Agencies.

The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics (BJS), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 72, Number 90, pages 26648–26649 on May 10, 2007, allowing for a 60 day comment period. The purpose of this notice is to allow for an additional 30 days for public comment until August 17, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Brian Reaves, Bureau of Justice Statistics, 810 Seventh St., NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection:**

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* 2007 Survey of State and Local Law Enforcement Agencies.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: The form numbers are CJ–44L and CJ–44S, Bureau of Justice Statistics, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federal, State, and Local Government. This information collection is a survey of State and local law enforcement agencies. The survey will provide statistics on law enforcement personnel, budgets,