

contract with Shell for Shell to manage the terminal independently from Magellan's other operations. Shell will report directly and exclusively to a hold separate trustee with respect to the operation of the terminal. Shell is required to keep confidential business information related to the terminal from Magellan employees, except as permitted by the Hold Separate Order.

Other paragraphs of the Hold Separate Order contain provisions regarding compliance reports, notification of changes that may affect compliance, and access to materials that may be necessary to monitor compliance.

The Hold Separate Order terminates on the earlier of two dates, either (1) three business days after the Commission withdraws its acceptance of the consent agreement, or (2) the day after the divestiture of the Oklahoma City terminal, as described in and required by the Proposed Order, is completed.

#### IV. Opportunity for Public Comment

By accepting the Agreement, subject to final approval, the Commission anticipates that the competitive problems alleged in the Complaint will be resolved. The purpose of this analysis is to invite public comment on the Agreement, including the proposed divestiture, to aid the Commission in its determination of whether it should make the Agreement final. This analysis is not intended to constitute an official interpretation of the Agreement or modify the terms of the Agreement in any way.

By direction of the Commission, Chairman Majoras recused.

**Donald S. Clark,**  
Secretary.

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BILLING CODE 6750-01-P

#### FEDERAL TRADE COMMISSION

[File No. 031 0135]

#### White Sands Health Care System, L.L.C., et al.; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the

consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before October 28, 2004.

**ADDRESSES:** Comments should refer to "White Sands Health Care System, L.L.C., et al., File No. 031 0135," to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H-159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the **SUPPLEMENTARY INFORMATION** section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail box:  
[consentagreement@ftc.gov](mailto:consentagreement@ftc.gov).

#### FOR FURTHER INFORMATION CONTACT:

Steve Vieux, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326-2306.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 28, 2004), on the World Wide Web, at <http://www.ftc.gov/os/2004/09/index.htm>. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Written

comments must be submitted on or before October 28, 2004. Comments should refer to "White Sands Health Care System, L.L.C., et al., File No. 031 0135," to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H-159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled "Confidential."<sup>1</sup> The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box:  
[consentagreement@ftc.gov](mailto:consentagreement@ftc.gov).

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at <http://www.ftc.gov>. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

#### Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed Consent Order with the White Sands Health Care System, L.L.C., Alamogordo Physicians' Cooperative, Inc., Dacite, Inc., and James R. Laurenza. The agreement settles charges that these

<sup>1</sup> Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

parties violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by orchestrating and implementing agreements among the physician and certified registered nurse anesthetist (nurse anesthetist) members of White Sands to fix prices and other terms on which they would deal with health plans, and to refuse to deal with such purchasers except on collectively-determined terms. The proposed Consent Order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed Order final.

The purpose of this analysis is to facilitate public comment on the proposed Order. The analysis is not intended to constitute an official interpretation of the agreement and proposed Order or to modify their terms in any way. Further, the proposed Consent Order has been entered into for settlement purposes only and does not constitute an admission by any respondent that said respondent violated the law or that the facts alleged in the Complaint (other than jurisdictional facts) are true.

### The Complaint

The allegations of the Complaint are summarized below.

White Sands is a physician-hospital organization (PHO), consisting of Alamogordo Physicians, an independent practice association (IPA); Gerald Champion Regional Medical Center (Gerald Champion), the sole hospital in the Alamogordo area, which is located in south-central New Mexico; and 31 non-physician health care providers, including all five nurse anesthetists in the Alamogordo area. White Sands was organized in 1996 to “develop pricing policies and \* \* \* negotiate and enter into Managed Care Contracts” on behalf of its members.

Alamogordo Physicians is composed of 45 physicians, representing 84% percent of all physicians independently practicing (that is, those not employed by area hospitals) in and around the Alamogordo area. Dacite provides consulting and payor contracting services to White Sands. Mr. Laurenza is the founder and President of Dacite, and the General Manager and principal contract negotiator for White Sands.

White Sands’ members refuse to deal with health plans on an individual basis. Instead, Mr. Laurenza negotiates price and other contract terms with

health plans that desire to contract with White Sands’ members. Contract terms for physician services that Mr. Laurenza negotiates for White Sands are presented to the White Sands’ Board of Managers for approval after acceptance by the Alamogordo Physicians’ Board of Directors. Mr. Laurenza also negotiates contract provisions, including fees, on behalf of independently practicing non-physician health care providers, namely nurse anesthetists. Respondents have orchestrated collective agreements on fees and other terms of dealing with health plans, carried out collective negotiations with health plans, and orchestrated refusals to deal and threats to refuse to deal with health plans that resisted respondents’ desired terms. Although White Sands purported to operate as a “messenger model,”—that is, an arrangement that does not facilitate horizontal agreements on price—it engaged in various actions that demonstrated or orchestrated such agreements.<sup>2</sup>

Respondents have repeatedly succeeded in forcing numerous health plans to raise fees paid to White Sands’ members, and thereby raised the cost of medical care in the Alamogordo area. They have been successful in “leverag[ing] the collective power of the members in obtaining more favorable reimbursement rates than could be negotiated \* \* \* individually.”

White Sands engaged in no efficiency-enhancing integration sufficient to justify respondents’ joint negotiation of fees. By orchestrating agreements among White Sands members to deal only on collectively-determined terms, and actual or threatened refusals to deal with health plans that would not meet those terms, respondents have violated Section 5 of the FTC Act.

### The Proposed Consent Order

The proposed Order is designed to remedy the illegal conduct charged in the Complaint and prevent its recurrence. It is similar to recent consent orders that the Commission has issued to settle charges that physician groups engaged in unlawful agreements to raise fees they receive from health plans. Unlike recent consent orders, however, this Order also settles charges that non-physician health care providers engaged in unlawful price agreements as

well. The Order also includes temporary “fencing-in” relief to ensure that the alleged unlawful conduct by respondents does not continue.

The proposed Order’s specific provisions are as follows:

Paragraph II.A prohibits respondents from entering into or facilitating any agreement between or among any health care providers: (1) To negotiate with payors on any health care provider’s behalf; (2) to deal, not to deal, or threaten not to deal with payors; (3) on what terms to deal with any payor; or (4) not to deal individually with any payor, or to deal with any payor only through an arrangement involving the respondents.

Other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits the respondents from facilitating exchanges of information between health care providers concerning whether, or on what terms, to contract with a payor. Paragraph II.C bars attempts to engage in any action prohibited by Paragraph II.A or II.B, and Paragraph II.D proscribes inducing anyone to engage in any action prohibited by Paragraphs II.A through II.C.

As in other Commission orders addressing health care providers’ collective bargaining with health care purchasers, certain kinds of agreements are excluded from the general bar on joint negotiations. First, respondents would not be precluded from engaging in conduct that is reasonably necessary to form or participate in legitimate joint contracting arrangements among competing health care providers, whether a “qualified risk-sharing joint arrangement” or a “qualified clinically-integrated joint arrangement.” The arrangement, however, must not facilitate the refusal of, or restrict, participants from contracting with payors outside of the arrangement.

As defined in the proposed Order, a “qualified risk-sharing joint arrangement” possesses two key characteristics. First, all participants must share substantial financial risk through the arrangement, such that the arrangement creates incentives for the participants jointly to control costs and improve quality by managing the provision of services. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement.

A “qualified clinically-integrated joint arrangement,” on the other hand, need not involve any sharing of financial risk. Instead, as defined in the proposed Order, participants must participate in

<sup>2</sup> Some arrangements can facilitate contracting between health care providers and payors without fostering an illegal agreement among competing physicians on fees or fee-related terms. One such approach, sometimes referred to as a “messenger model” arrangement, is described in the 1996 Statements of Antitrust Enforcement Policy in Health Care jointly issued by the Federal Trade Commission and U.S. Department of Justice, at 125. See <http://www.ftc.gov/reports/hlth3s.htm#8>.

active and ongoing programs to evaluate and modify their clinical practice patterns in order to control costs and ensure the quality of services provided, and the arrangement must create a high degree of interdependence and cooperation among participants. As with qualified risk-sharing arrangements, any agreement concerning price or other terms of dealing must be reasonably necessary to achieve the efficiency goals of the joint arrangement.

Also, because the Order is intended to reach agreements among horizontal competitors, Paragraph II would not bar agreements that only involve health care providers who are part of the same medical group practice (defined in Paragraph I.E).

Paragraph III, for a period of three years, bars Dacite and Mr. Laurenza from negotiating with any payor on behalf of White Sands, Alamogordo Physicians, or any White Sands or Alamogordo Physicians member; and from advising any White Sands or Alamogordo Physicians member to accept or reject any term, condition, or requirement of dealing with any payor. This temporary "fencing-in" relief is included to ensure that the alleged unlawful conduct by these respondents does not continue.

Paragraph IV, for a period of three years, requires respondents to notify the Commission before entering into any arrangement to act as a messenger, or as an agent on behalf of any health care providers, with payors regarding contracts. Paragraph IV sets out the information necessary to make the notification complete.

Paragraph V, which applies only to White Sands, requires White Sands to distribute the Complaint and Order to all health care providers who have participated in White Sands, and to payors that negotiated contracts with White Sands or indicated an interest in contracting with White Sands. Paragraph V.B requires White Sands, at any payor's request and without penalty, or within one year after the Order is made final, to terminate its current contracts. Paragraph V.C requires White Sands to distribute payor requests for contract termination to all health care providers who participate in White Sands, and, in the event that White Sands fails to comply with the requirements of Paragraph V due to dissolution or cessation of business, Alamogordo Physicians is required to do so.

Paragraph VI requires Alamogordo Physicians to notify the Commission of any change in Alamogordo Physicians that may affect its compliance with the

Order, such as dissolution. In the event that White Sands or Alamogordo Physicians fails to comply with the requirements of Paragraph V, or Alamogordo Physicians fails to comply with Paragraph VI, Paragraph VII would require Mr. Laurenza to do so.

Paragraph VIII generally requires Dacite to distribute the Complaint and Order to health care providers who have participated in any group that has been represented by Dacite since January 1, 2003, and to each payor with which Dacite has dealt since January 1, 2003, for the purpose of contracting. In the event that Dacite fails to comply with the requirements of Paragraph VIII, Paragraph IX would require Mr. Laurenza to do so.

Paragraphs V.E, V.F, VIII.C, VIII.D, X, and XI of the proposed Order impose various obligations on respondents to report or provide access to information to the Commission to facilitate monitoring respondents' compliance with the Order.

The proposed Order will expire in 20 years.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 04-22699 Filed 10-7-04; 8:45 am]

**BILLING CODE 6750-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Meeting of the Presidential Advisory Council on HIV/AIDS

**AGENCY:** Department of Health and Human Services, Office of the Secretary.

**ACTION:** Notice of meeting.

**SUMMARY:** As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the Presidential Advisory Council on HIV/AIDS (PACHA) will hold a meeting. This meeting is open to the public. A description of the Council's functions is included also with this notice.

**Date and Time:** November 9, 2004, 8:30 a.m. to 5 p.m., and November 10, 2004, 8:30 a.m. to 4 p.m.

**ADDRESSES:** Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Conference Room 800.

#### FOR FURTHER INFORMATION, CONTACT:

Joseph Grogan, Esq., Executive Director, Presidential Advisory Council on HIV/AIDS, Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room

736E, Washington, DC 20201; or visit the Council's Web site at <http://www.pacha.gov>.

**SUPPLEMENTARY INFORMATION:** PACHA was established by Executive Order 12963, dated June 14, 1995, as amended by Executive Order 13009, dated June 14, 1996. PACHA was established to provide advice, information, and recommendations to the President regarding programs and policies intended to (a) promote effective prevention of HIV disease, (b) advance research on HIV and AIDS, and (c) promote quality services to persons living with HIV disease and AIDS. PACHA was established to serve solely as an advisory body to the President and the Secretary of Health and Human Services. PACHA is composed of not more than 35 members. PACHA membership is determined by the Secretary from individuals who are considered authorities with particular expertise in, or knowledge of, matters concerning HIV/AIDS.

The agenda for this meeting includes the following topics: HIV/AIDS prevention, care and treatment, and global HIV/AIDS issues. Time will be allotted during the meeting for public comment.

Public attendance is limited to space available and pre-registration is required for both attendance and public comment. Any individual who wishes to attend and/or comment must call (202) 690-5560 to register. Individuals must provide a government issued photo ID for entry into the meeting. Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the registrar.

Members of the public will have the opportunity to provide comments at the meeting. Public comment will be limited to three (3) minutes per speaker and to time available. Written testimony, not exceed five (5) pages, will be accepted by mail or facsimile at (202) 690-7560. Written testimony will not be accepted after 5 p.m., Wednesday, November 3, 2004.

Dated: September 27, 2004.

**Joseph Grogan,**

*Executive Director, Presidential Advisory Council on HIV/AIDS.*

[FR Doc. 04-22626 Filed 10-7-04; 8:45 am]

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