

REMARKS BEFORE A JOINT HEARING OF

THE FEDERAL TRADE COMMISSION

AND

THE U.S. DEPARTMENT OF JUSTICE

WASHINGTON, D.C.

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AFTERNOON SESSION

PHYSICIAN INFORMATION SHARING

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First, I would like to thank the organizers of this Hearing for inviting me to participate. I am honored to be here and to present my perspective on the timely important issue of physician information sharing.

One of the reasons for my inclusion on this particular panel is my involvement as the attorney for PriMed Physicians and other physician groups in Dayton, Ohio in seeking an Advisory Opinion from the FTC regarding the proposed formation of what we called a Physicians' Healthcare Advocacy Group in Dayton, Ohio. The FTC issued that Advisory Opinion on February 6 of this year. The focus of that Advisory Opinion is the subject of this afternoon's hearing, i.e., the sharing of information regarding third party payors by physicians. A copy of the Advisory Opinion is incorporated in and made a part of these remarks for the record as Exhibit A to the copy of my remarks filed with the Hearing Officer.

Also, with us today is Bob Matthews who is a consultant to PriMed and was actively involved in the Opinion process and the implementation of the Dayton Health Care Advisory Group in accordance with the Advisory Opinion.

At the outset, I would like to take this opportunity to single out and compliment Judy Moreland who was my contact with the FTC on the Advisory Opinion process, also her colleagues who worked on the matter and the FTC itself for making the entire Advisory Opinion process a collateral endeavor. At all times, the feeling that I got from the FTC reviewers was that they would listen very carefully to the facts, would analyze all of the existent factors with the Opinion seeker(s) and work with Opinion seeker(s) to see if there is a way that they can both meet the needs of the Opinion seeker(s) while navigating restraint of trade concerns. In the end, the Advisory Opinion cleared the way for groups of competing physicians in Dayton, Ohio to

collect payor information, review and analyze that information and comment on its findings to various members of the Dayton community, including the purchasers of healthcare insurance, all subject, of course, to the guidelines and cautionary language set forth in the Advisory Opinion. I can report to you that the Advisory Opinion process works and encourage the FTC to continue in this same constructive, probing and collaborative approach. I believe these hearings reflect the FTC's intent to do so.

I would like to share with you my perspective on the needs of information sharing by physicians who provide health care services in separate competing practices. This perspective comes from my experience as an attorney who has been practicing exclusively in the health care industry for the past twenty-five years, representing health care providers as well as managed care organizations, among others. When I began focusing my practice on the health care industry, I structured some of the early health maintenance organizations. At the time, the physicians were "king of the hill" in the health care landscape. It was a world of fee-for-service where the physician basically set the fees and was paid by very passive health insurance companies.

Over the course of the ensuing years, however, many factors intervened, all of which cumulatively over time brought more and more pressure to bear upon both physician fees and physician authority in general. Those factors included:

- Medicare
- Managed Care (whatever that means - certainly capitated or deeply discounted fees, burdensome and costly red tape and wholesale diversion of patients)
- The advent of hospital networks and the acquisition of many theretofore independent and competing physician practices
- The national malpractice insurance crisis

In some communities, of which Dayton, Ohio is a prime example, a handful or even fewer payors now dominate the marketplace and have driven physician fees so low as to drive out some specialty groups, cause early retirements, inhibit recruitment of new physicians to the area and, inexorably, reduce the accessibility to physicians as well as lower the quality of healthcare in the area.

These are the harsh realities faced by independent physician groups in many areas across the country today.

Along with an understanding of the physicians' plight in today's climate, it is also important for regulators to recognize that the healthcare marketplace is unique. The end-user, patient/customer in this marketplace is not the purchaser. Patients do not shop around for the best product for the best price. From the time that healthcare benefits became a job benefit of employment (around the middle of the last century) and subsequently through government sponsored programs such as Medicare and Medicaid, the purchaser in the health care market is a third party payor or payor/employer/governmental complex.

Historically and for the most part, today physicians have practiced in very small business groups. They are not equipped to negotiate effectively with the large, powerful and well-financed payor/employer complex.

Groups of independent and competing physician groups must collaborate in order to coordinate and fund their ability to perform effective due diligence on third party payors in order to make employers, who are choosing the payors and paying the bills, educated consumers.

Independent physician groups need to collaborate in three efforts:

- Information gathering – including but not limited to fee information

- Information analysis
- Information dissemination and publication

Examples of the types of information that need to be collected include:

- Reimbursement rate information in the local market and comparable markets
- Specifics on claims review/medical necessity criteria
- Representations made by payors to employers/patients versus mandates to providers

Finally, enabling competing physician groups to collaborate for the purposes I have discussed should result in the enhancement of both the competitiveness and quality of healthcare delivered in this unique marketplace. It should result in an increase in the number and availability of physicians as well as an increase in the efficiency of the operation and delivery of healthcare, and in the quality of the care provided.

Thank you.