ATTACHMENT 1

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September 7, 2007

Joseph Miller., Esq., Acting Chief
United States Department of Justice
Antitrust Division
1401 H Street, N.W., Suite 4000
Washington, D.C. 20530

Via Federal Express

Dear Attorney Miller:

The "Plaintiff's Competitive Impact Statement Concerning the Proposed Final Judgment as to the Federation of Physicians & Dentists and Lynda Odenkirk" (Case No. 1:05-CV-431 filed on 7-2-07) is inaccurate in several respects and harmful not only to the Federation, but to any physician who must contract with a managed care insurer and chooses to use the third-party messenger system to negotiate a fair deal.

Here are the problems with the Competitive Impact Statement:

- The Statement ignores the fact that physicians were forced to react to anti-competitive behaviors by Cincinnati insurers because the Department of Justice did not enforce antitrust principles against those insurers. The DOJ allowed a monopsony of insurers to impose unrealistic contract terms on obstetricians and to fix prices below fair value. These insurers had driven prices to below Medicare levels, which created an unsustainable financial loss for those doctors. Most physicians charge at least 2-3 times Medicare rates as a fair price.

- The actions of the doctors are inaccurately described as a "...conspiracy to artificially raise fees by healthcare insurers to Federation members in the Cincinnati area... ". The doctors were actually trying to partially reverse the *artificial depression* of fees resulting from the concerted, unopposed and unwarranted fee depression by the insurance monopsony in Cincinnati.

- The Statement ignores the consequences of *not resisting* the artificial depression of fees by insurers in Cincinnati. Financial hardship caused by unfair reimbursement would have caused many Cincinnati obstetricians to stop practicing there, compromising patient access to a critical specialty. This is an example of price fixing by insurers resulting secondarily in harm

to the public; this anticompetitive pricing by insurers has not been addressed by the DOJ, typical of DOJ enforcement policy in general.

- The prosecution of doctors in Cincinnati is not an isolated case of the DOJ attacking physicians for alleged antitrust activity while ignoring the anticompetitive activities of insurers that triggered the physician actions. The AMA has cited more than twenty (20) antitrust cases against physicians in the last few years and not a single example of the DOJ prosecuting an insurance company for predatory contracting practices. The cases usually settle by consent decree because of the threat of huge defense costs. The cost to defend such cases properly is punitive, not within the reach of small physician organizations or a non-profit Union like the Federation of Physicians & Dentists. The cost to defend the orthopedic surgeons in Delaware from similar antitrust charges was $1.5 million. The one-sided antitrust enforcement policy of the DOJ and the political motivations for that policy are therefore not exposed publicly in court.

- The consent decree is supposed to "... eliminate a substantial restraint on price competition among competing ob-gyns..." The only real effect of the consent decree will be to eliminate physician resistance to the downward unopposed coordinated pressure on fees by insurers.

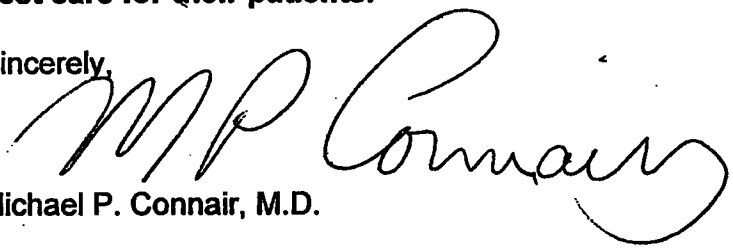
- Neutralizing the Federation will eliminate a strong proponent for the proper use of the third-party messenger system. The Federation has educated physicians in many states in its proper use, often preventing the misuse of the technique. Without an experienced nonprofit organization like the Federation, doctors will be less willing to use the third-party messenger system for fear of making errors resulting in DOJ prosecution.

- The insurers have the ear of the DOJ and the DOJ responds to requests from insurers to initiate the investigation and prosecution of physician organizations that resist unfair contracts and fee schedules. It is the experience of the Federation that the DOJ does *not* respond to similar physician requests for help against anti-competitive insurance company behavior including price fixing. Mr. Kramer has stated that the DOJ will prosecute insurers for price fixing. I ask that your department provide me with some examples of such investigations and/or prosecution of insurers.

- The one-sided DOJ enforcement policy against physicians and in favor of insurers perverts the intent of the Sherman Act. Antitrust rules are supposed to prevent huge corporations from taking advantage of consumers (patients) and small businesses (doctor offices). The large insurers in this case and similar cases use the DOJ as a weapon against physician resistance to unfair contracts to increase insurer profits.

This Competitive Impact Statement reflects a misguided DOJ enforcement policy that ignores antitrust principles and that encourages anticompetitive behavior by insurers. The enforcement policy interferes with the ability of physicians to manage a medical practice and to continue to provide the best care for their patients.

Sincerely,



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