UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTHERN OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. THE FEDERATION OF PHYSICIANS AND DENTISTS, et al., Defendants.	)	Civil Action No.

FINAL JUDGMENT AS TO SETTLING PHYSICIAN DEFENDANTS

WHEREAS, Plaintiff, the United States of America, filed its Complaint on June 24, 2005, alleging that the settling physician Defendants Dr. Warren Metherd, Dr. Michael Karram, and Dr. James Wendel, participated in agreements in violation of Section 1 of the Sherman Act, and the Plaintiff and the settling physician Defendants, by their respective attorneys, have consented to the 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 settling physician Defendants that the law has been violated as alleged in such Complaint, or that the facts alleged in such complaint, other than the jurisdictional facts, are true;

AND WHEREAS the settling physician Defendants agree to be bound by the provisions of this Final Judgment, pending its approval by this Court;

AND WHEREAS, the essence of this Final Judgment is to restore lost competition, as alleged in the Complaint, and to enjoin the settling physician Defendants from conspiring to increase fees for the provision of obstetrical and gynecological services;

AND WHEREAS, the United States requires the settling physician Defendants to agree to certain procedures and prohibitions for the purposes of preventing recurrence of the alleged violation and restoring the loss of competition alleged in the Complaint;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of Plaintiff and the settling physician 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 settling physician Defendants in this action. The Complaint states a claim upon which relief may be granted against the settling physician 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, directly or indirectly, in any manner;

(B) "competing physician" means, in relation to each settling physician Defendant, any obstetrician-gynecologist in any separate, private medical practice, other than the settling physician's own practice, in any of the following counties: Boone and Kenton in Kentucky, and Hamilton and Butler in Ohio.

(C) "messenger service" means, in relation to Defendant Federation of Physicians and Dentists or its successors, communicating to a payer any information the Federation receives from a member physician or communicating to a member physician any information the Federation receives from a payer;

(D) "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 independent practice associations, individuals, health insurance companies, health maintenance organizations, preferred provider organizations, and employers;

(E) "payer contract" means a contract between a payer and a physician by which that physician agrees to provide physician services to persons designated by the payer;

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

(G) "settling physician Defendants" means Defendants Dr. Warren Metherd, Dr. Michael Karram, and Dr. James Wendel, who have consented to entry of this Final Judgment, and all persons acting as agents on behalf of any settling physician Defendant.

III. APPLICABILITY

This Final Judgment applies to the settling physician Defendants and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV. PROHIBITED CONDUCT

The settling physician Defendants each are enjoined from, in any manner, directly or indirectly:

(A) encouraging, facilitating, entering into, or participating in any actual or potential agreement or understanding between or among competing physicians about any fee or other payer contract term with any payer or group of payers, including the acceptability or negotiation of any fee or other payer contract term with any payer or group of payers;

(B) encouraging, facilitating, entering into, or participating in any actual or potential agreement or understanding between or among competing physicians about the manner in which those physicians will negotiate or deal with any payer or group of payers, including participating in or terminating any payer contract;

(C) encouraging, facilitating, entering into, or participating in any actual or potential agreement or understanding between or among competing physicians about the use of any person or organization that provides any consulting, financial, legal, or negotiating services concerning any payer contract, or that in any way communicates with any payer;

(D) using Defendant Federation of Physicians and Dentists for any messenger, financial, legal, consulting, or negotiating service concerning any payer contract or contract term; or

(E) communicating with any competing physician about:

(1) the actual or possible view, intention, or position of each settling physician Defendant or his medical practice group, or any competing physician concerning the negotiation or acceptability of any proposed or existing payer contract or contract term, including his or his medical practice group's negotiating or contracting status with any payer, or

(2) any proposed or existing term of any payer contract that affects:

(a) the amount of fees or payment, however determined, that the settling physician Defendant or his medical practice group charges, contracts for, or accepts from or considers charging, contracting for, or accepting from any payer for providing physician services;

(b) the duration, amendment, or termination of the payer contract;

(c) utilization review and pre-certification; or

(d) the manner of resolving disputes between the participating physician or group and the payer.

V. PERMITTED CONDUCT

(A) Subject to the prohibitions of Section IV of this Final Judgment, the settling physician Defendants:

(1) may discuss with any competing physician any medical issues relating to the treatment of a specific patient; and

(2) may participate in activities of any medical society; and

(B) Nothing in this Final Judgment shall prohibit settling physician Defendants from

(1) advocating or discussing, in accordance with the *Noerr-Pennington* doctrine, legislative, judicial, or regulatory actions, or other governmental policies or actions; or

(2) responding to communications necessary to participate in lawful activities by clinically or financially integrated physician network joint ventures and multi-provider networks, as those terms are used in Statements 8 and 9 of the 1996 Statements of Antitrust Enforcement Policy in Health Care, 4 Trade Reg. Rep. (CCH) ¶ 13,153 ("Health Care Policy Statements").

VI. CERTIFICATION

For a period of ten years following the date of entry of this Final Judgment, each settling physician Defendant shall certify to the United States annually on the anniversary date of the entry of this Final Judgment whether he and his agents have complied with the provisions of this Final Judgment.

VII. COMPLIANCE INSPECTION

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

(1) access during each settling physician Defendant's regular business hours to inspect and copy, or, at the United States' option, to require that each settling physician

Defendant provide copies of all books, ledgers, accounts, records, and documents in his possession, custody, or control, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, each settling physician Defendant, who may have counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of each settling physician Defendant.

(B) Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, each settling physician Defendant shall submit written reports, under oath if requested, relating to any matters contained in this Final Judgment as may be requested.

(C) No information or documents obtained by the means provided in this Section shall be divulged by the United States to any person other than an authorized representative 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) When a settling physician Defendant furnishes information or documents to the United States, if the 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 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.

VIII. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment, but no other person, 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.

IX. EXPIRATION OF FINAL JUDGMENT

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

X. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest.

Dated:

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United States District Judge

CERTIFICATE OF SERVICE

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

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