FILED

JUN 24 2005

JAMES BONINI, Clerk
CINCINNATI, OHIO

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 J. BECKWITH

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 pattern 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 pattern 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 Choice Care 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 8 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 9], 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 Choice Care. . . .
>
> 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 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:

R. HEWITT PATE
Assistant Attorney General
Antitrust Division

J. BRUCE McDONALD
Deputy Assistant Attorney General
Antitrust Division

J. ROBERT KRAMER II
Director of Enforcement
Antitrust Division

MARK J. BOTTI
Chief, Litigation I
Antitrust Division

JOSEPH MILLER
Assistant Chief, Litigation I
Antitrust Division

GREGORY G. LOCKHART
United States Attorney

GERALD F. KAMINSKI (Bar No. 0012532)
Assistant United States Attorney

Office of the United States Attorney
221 E. 4th Street
Suite 400
Cincinnati, Ohio 45202
(513) 684-3711

STEVEN KRAMER
JOHN LOHRER
PAUL TORZILLI
Attorneys
Antitrust Division
United States Department of Justice
1401 H Street, N.W., Suite 4000
Washington, D.C. 20530
(202) 307-0997
steven.kramer@usdoj.gov

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