UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

UNITED STATES OF AMERICA, Plaintiff, vs. HEALTH CHOICE OF NORTHWEST MISSOURI, INC., HEARTLAND HEALTH SYSTEM, INC., and ST. JOSEPH PHYSICIANS, INC., Defendants.	**{Filed September 13, 1995}** Civil Action No:

FINAL JUDGMENT

Plaintiff, the United States of America, having filed its Complaint on September 13, 1995, and plaintiff and defendants, by their respective attorneys, having 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 an admission by any party with respect to any issue of fact or law;

AND WHEREAS defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby ORDERED, ADJUDGED, AND DECREED:

I.

JURISDICTION

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states claims upon which relief may be granted against the defendants under Section 1 of the Sherman Act, 15 U.S.C. § 1.

II.

DEFINITIONS

As used in this Final Judgment:

(A) "Ancillary services" means home health care, hospice care, outpatient rehabilitation services, and durable medical equipment.

(B) "Competing physicians" means physicians in the same relevant physician market in separate medical practices.

(C) "General adult primary care" ("GAPC") means family practice and general internal medicine, whether or not physicians practicing in these areas are Board certified or Board eligible.

(D) "Health Choice" means Health Choice of Northwest Missouri, Inc., each organization controlled by or under common control with it, and its directors, officers, agents, employees, and successors.

(E) "Heartland" means Heartland Health System, Inc., each organization controlled by or under common control with it, and its directors, officers, agents, employees, and successors, but does not include Heartland Health Foundation.

(F) "Messenger model" means the use of an agent or third party to convey to purchasers any information obtained from individual providers about the fees which each provider is willing to accept from such purchasers, and to convey to providers any contract offer made by a purchaser, where (1) each provider makes a separate, independent, and unilateral decision to accept or reject a purchaser's offer, (2) the fee information conveyed to purchasers is obtained separately from each individual provider, and (3) the agent or third party (a) does not negotiate collectively for the providers, (b) does not disseminate to any provider the agent's or third party's or any other provider's views or intentions as to the proposal and (c) does not otherwise serve to facilitate any agreement among providers on price or other significant terms of competition.

(G) "Non-Heartland physician" means a physician who is not employed by Heartland and whose practice is not owned by Heartland.

(H) "Provider panel" means those health care providers whom an organization authorizes to provide care to its enrollees and whom enrollees are given financial incentives to use.

(I) "Qualified managed care plan" means an organization that is owned, in whole or in part, by any or all of the defendants and that offers a provider panel. A qualified managed care plan must satisfy each of the following criteria:

(1) its owners or not-for-profit members ("members") who compete either with other owners or members or with providers

participating on the organizations's provider panel (a) share substantial financial risk and (b) either directly or through ownership or membership in another organization comprise no more than 30% of the physicians in any relevant physician market, except that it may include Heartland, any single physician, or any single physician practice group for each relevant physician market,

(2) it has a provider panel that includes no more than 30% of the physicians in any relevant physician market, unless, for those subcontracting physicians whose participation increases the panel beyond 30%, (a) there is a sufficient divergence of economic interest between those physicians and the owners or members of the organization so that the owners or members have the incentive to bargain down the fees of the subcontracting physicians, (b) the organization does not directly pass through to the payer substantial liability for making payments to the subcontracting physicians, and (c) the organization does not compensate those subcontracting physicians in a manner that substantially replicates ownership in the organization, and

(3) it does not facilitate agreements between any subcontracting physicians and the owners or members concerning charges to payors not contracting with the organization.

Nothing herein shall be deemed to limit the ability of a qualified managed care plan to create financial incentives for improved performance goals for a provider or the organization or to shift risk to a provider, consistent with this Paragraph.

(J) "Relevant physician market" means GAPC physicians, pediatricians, obstetricians or gynecologists in Buchanan County, Missouri, unless defendants obtain plaintiff's prior written approval of a different definition for any or all of these markets, or any other relevant market for physician services. This definition is for the sole and limited purposes of this Final Judgment, and shall not constitute an admission or agreement that the relevant physician market for any other purpose is limited to Buchanan County, Missouri.

(K) "SJPI" means St. Joseph Physicians, Inc., each organization controlled by or under common control with it, and its directors, officers, agents, employees, and successors.

(L) "Subcontracting physician" means any physician who provides health care services to a qualified managed care plan, but does not hold, directly or indirectly, any ownership interest in that plan.

(M) "Substantial financial risk" means financial risk such as that achieved when an organization receives revenue through capitation or payment of insurance premiums, or when the organization creates significant financial incentives for providers to achieve specified cost-containment goals, such as withholding a substantial amount of their compensation, with distribution of that amount made only if the cost-containment goals are met.

III.

APPLICABILITY

This Final Judgment applies to Health Choice, Heartland, and SJPI, and to all other persons who receive actual notice of this Final Judgment by personal service or otherwise and then act or participate in concert with any or all of the defendants.

IV.

SJPI INJUNCTIVE RELIEF

SJPI is enjoined from:

(A) Requiring any physician to provide physician services exclusively through SJPI, Health Choice, or any managed care plan in which SJPI has an ownership interest, precluding any physician from contracting with any payor or urging any physician not to contract with another payor; provided that, nothing in this Final Judgment shall prohibit SJPI from paying dividends to its owners;

(B) Disclosing to any physician any financial or price or similar competitively sensitive business information about any competing physician, except as is reasonably necessary for the operation of any qualified managed care plan in which SJPI has an ownership interest, or requiring any physician to disclose to SJPI any financial, price or similar competitively sensitive business information about any competitor of SJPI or managed care plan in which SJPI has an ownership interest; provided that, nothing in this Final Judgment shall prohibit the disclosure of information already generally available to the medical community or the public;

(C) Setting the fees or other terms of reimbursement or negotiating for competing physicians unless SJPI is a qualified managed care plan; provided that, nothing in this Final Judgment shall prohibit SJPI from using a messenger model, even if SJPI is not a qualified managed care plan; and

(D) Owning an interest in any organization that sets fees or other terms of reimbursement for, or negotiates for, competing physicians, unless that organization is a qualified managed care plan and complies with Paragraphs (A) and (B) of this Section IV of the Final Judgment as if those Paragraphs applied to that organization; provided that, nothing in this Final Judgment shall prohibit SJPI from owning an interest in an organization that uses a messenger model, even if the organization is not a qualified managed care plan.

V.

HEALTH CHOICE INJUNCTIVE RELIEF

Except as permitted in Section VIII, Health Choice is enjoined from:

(A) Requiring any physician to provide physician services exclusively through SJPI, Health Choice, or any managed care plan in which Health Choice has an ownership interest, precluding any physician from contracting with any payor, or urging any physician not to contract with another payor;

(B) Disclosing to any physician any financial, price or similar competitively sensitive business information about any competing physician, except as is reasonably necessary for the

operation of Health Choice or any managed care plan in which Health Choice has an ownership interest, or requiring any physician to disclose to Health Choice any financial, price or similar competitively sensitive business information about any competitor of Health Choice or any managed care plan in which Health Choice has an ownership interest; provided that, nothing in this Final Judgment shall prohibit the disclosure of information already generally available to the medical community or the public;

(C) Setting the fees or other terms of reimbursement or negotiating for competing physicians unless Health Choice is a qualified managed care plan; provided that, nothing in this Final Judgment shall prohibit Health Choice from using a messenger model, even if Health Choice is not a qualified managed care plan; and

(D) Owning an interest in any organization that sets fees or other terms of reimbursement for, or negotiates for, competing physicians, unless that organization is a qualified managed care plan and complies with Paragraphs (A) and (B) of this Section V of the Final Judgment as if those Paragraphs applied to that organization; provided that, nothing in this Final Judgment shall prohibit Health Choice from owning an interest in an organization that uses a messenger model, even if the organization is not a qualified managed care plan.

VI.

HEARTLAND INJUNCTIVE RELIEF

Except as permitted in Section VIII, Heartland is enjoined from:

(A) (1) Disclosing to any person directly responsible for pricing physician or ancillary services of Heartland any price or, without appropriate consent, other proprietary business information about any other physician or ancillary services provider, except as is reasonably necessary for the operation of any qualified managed care plan in which Heartland has an ownership interest, and

(2) Disclosing to any competing physician or ancillary services provider any price or, without appropriate consent, other proprietary business information about any other physician or ancillary services provider; provided that, nothing in this Final Judgment shall prohibit the disclosure of information already generally available to the medical community or the public;

(B) Owning an interest in any organization that sets fees or other terms of reimbursement for, or negotiates for, competing physicians, unless that organization is a qualified managed care plan and complies with Paragraphs (A) and (B) of Section V of the Final Judgment as if those Paragraphs applied to that organization; provided that, nothing in this Final Judgment shall prohibit Heartland from owning an interest in an organization

that uses a messenger model, even if the organization is not a qualified managed care plan;

(C) Agreeing with a competitor to allocate or divide the market for, or set the price for, any competing service, except as is reasonably necessary for the operation of any qualified managed care plan or legitimate joint venture in which Heartland has an ownership interest;

(D) Acquiring during the next five years:

(1) The practice of any non-Heartland physician who at the filing of this Final Judgment has active staff privilieges in family practice or general internal medicine (diagnosticians excluding subspecialties of internal medicine) or the practice of any physician who after the filing of this Final Judgment establishes a practice and provides services as a GAPC physician in Buchanan County, Missouri, without the prior written approval of the plaintiff; and

(2) Any physician practice located in Buchanan County, Missouri that has provided services in Buchanan County, Missouri within five years prior to the date of the proposed acquisition, unless Heartland provides plaintiff with 90 days' prior written notice of the proposed acquisition; and

(E) Conditioning the provision of any inpatient hospital service to patients of any competing managed care plan by making that service available only if the competing managed care plan:

(1) Purchases or utilizes (a) Heartland's utilization review program, (b) any Heartland managed care plan, or

(c) Heartland's ancillary or outpatient services or any physician's services, unless such services are intrinsically related to the provision of acute inpatient care, such as but not limited to where Heartland's provision of inpatient care inherently gives rise to Heartland bearing professional responsibility for such services, so long as Heartland otherwise makes its inpatient services available to competing managed care plans as set forth in this Paragraph; or

(2) Contracts with or deals with Health Choice, Community Health Plan, or any other Heartland managed care plan.

This Paragraph (E) shall not apply to any contract with an organization in which Heartland has a substantial financial risk.

This Paragraph (E) shall not limit Heartland's ability to condition the provision of any inpatient hospital service on the purchase or utilization of ancillary or outpatient services or physician's services selected by Heartland, pursuant to any contract in which Heartland bears financial risk, so long as Heartland otherwise makes its inpatient services available to competing managed care plans as set forth in this Paragraph.

VII.

ADDITIONAL PROVISIONS

(A) Health Choice shall:

(1) Inform each physician on its provider panel annually in writing that the physician is free to contract separately with any other managed care plan on any terms; and

(2) Notify in writing each payor with which Health Choice has or is negotiating a contract that each provider on Health Choice's provider panel is free to contract separately with such payor on any terms, without consultation with Health Choice; and

(B) Heartland shall:

(1) Observe the attached and incorporated Heartland Referral Policy relating to the provision of ancillary services;

(2) File with plaintiff each year on the anniversary of the filing of the Complaint in this action a written report disclosing the rates, terms, and conditions for inpatient hospital services Heartland provides to any managed care plan or hospice program, including those affiliated with Heartland. Plaintiff agrees not to disclose this information unless in connection with a proceeding to enforce this Final Judgment or pursuant to court or Congressional order; and

(3) Give plaintiff reasonable access to its credentialing files for the purpose of determining if Heartland used its credentialing authority to deny hospital privileges to physicians employed by or otherwise affiliated with a competing managed care plan, provided Heartland is given all necessary authorizations for the release of such records.

VIII.

HEARTLAND PERMITTED ACTIVITIES

Notwithstanding any of the prohibitions or requirements of Sections IV through VII of this Final Judgment, Heartland may:

(A) Own 100% of an organization that includes competing physicians on its provider panel and either uses a messenger model or sets fees or other terms of reimbursement or negotiates for physicians so long as the organization complies with Paragraphs (A) and (B) of Section V of the Final Judgment as if those Paragraphs applied to that organization, and with the subcontracting requirements of a qualified managed care plan;

(B) Employ or acquire the practice of any physician not located in Buchanan County, Missouri, who derived less than 20% of his or her practice revenues from patients residing within Buchanan County, Missouri, in the year before the employment or acquisition;

(C) If Plaintiff does not disapprove under the procedures set out in this Paragraph (C), employ or acquire the practice of any GAPC physician so long as Heartland incurs substantial costs recruiting such physician for the purpose of beginning the offering of GAPC services in Buchanan County, Missouri, or gives either substantial financial support or an income guarantee to such physician to induce that physician to begin offering GAPC services in Buchanan County, Missouri, and employs the physician or acquires the practice within two years of the physician first offering GAPC services in Buchanan County, Missouri. Heartland must give the plaintiff an opportunity to disapprove, by giving plaintiff 30 days prior written notice and such information in Heartland's possession as is necessary to determine whether the above criteria have been met. Plaintiff shall not disapprove if

these criteria are met. If plaintiff disapproves, plaintiff will set forth the reasons for disapproval. If plaintiff fails to disapprove within 30 days of receipt of the requisite information, the criteria shall be deemed to have been met, and Heartland may employ or acquire the practice of the GAPC physician; and

(D) With plaintiff's prior written approval, employ or acquire the practice of any physician who will cease to be a GAPC physician in Buchanan County, Missouri, unless Heartland acquires the practice or employs the physician.

IX.

JUDGMENT MODIFICATION

In the event that any of the provisions of this Final Judgment proves impracticable as to any defendant or in the event of a significant change in fact or law, that defendant may move for, and plaintiff will reasonably consider, an appropriate modification of this Final Judgment. Nothing in this Section limits the right of any defendant to seek any modification of this Final Judgment it deems appropriate.

X.

COMPLIANCE PROGRAM

Each defendant shall maintain a judgment compliance program, which shall include:

(A) Distributing within 60 days from the entry of this Final Judgment, a copy of the Final Judgment and Competitive

Impact Statement to all senior administrative officers and directors;

(B) Distributing in a timely manner a copy of the Final Judgment and Competitive Impact Statement to any person who succeeds to a position described in Paragraph (A) of this Section X;

(C) Briefing annually those persons designated in Paragraphs (A) and (B) of this Section X on the meaning and requirements of this Final Judgment and the antitrust laws, including penalties for violation thereof;

(D) Obtaining from those persons designated in Paragraphs (A) and (B) of this Section X annual written certifications that they (1) have read, understand, and agree to abide by this Final Judgment, (2) understand that their noncompliance with this Final Judgment may result in conviction for criminal contempt of court and imprisonment and/or fine, and (3) have reported any violation of this Final Judgment of which they are aware to counsel for the respective defendant; and

(E) Maintaining for inspection by plaintiff a record of recipients to whom this Final Judgment and Competitive Impact Statement have been distributed and from whom annual written certifications regarding this Final Judgment have been received.

XI.

CERTIFICATIONS

(A) Within 75 days after entry of this Final Judgment, each defendant shall certify to plaintiff that it has made the

distribution of the Final Judgment and Competitive Impact Statement as required by Paragraph (A) of Section X above;

(B) For five years after the entry of this Final Judgment, on or before its anniversary date, each defendant shall certify annually to plaintiff whether it has complied with the provisions of Section X above applicable to it; and

(C) Each defendant shall provide written notice to plaintiff if at any time during the period that this Final Judgment is in effect (1) that defendant owns an interest in a qualified managed care plan, (2) that qualified managed care plan includes among its owners or members any single physician practice group which comprises more than 30% of the physicians in any relevant physician market, and (3) that single physician practice group adds additional physicians.

XII.

PLAINTIFF'S ACCESS

For the sole purpose of determining or securing compliance with this Final Judgment, and subject to any recognized privilege, authorized representatives of the United States Department of Justice, upon written request of the Assistant Attorney General in charge of the Antitrust Division, shall on reasonable notice be permitted during the term of this Final Judgment:

(A) Access during regular business hours of any defendant to inspect and copy all records and documents in the possession

or under the control of that defendant relating to any matters contained in this Final Judgment;

(B) To interview officers, directors, employees, and agents of any defendant, who may have counsel present, concerning such matters; and

(C) To obtain written reports from any defendant, under oath if requested, relating to any matters contained in this Final Judgment.

XIII.

NOTIFICATIONS

To the extent that it may affect compliance obligations arising out of this Final Judgment, each defendant shall notify the plaintiff at least 30 days prior to any proposed (1) dissolution, (2) sale or assignment of claims or assets of that defendant resulting in the emergence of a successor corporation, or (3) change in corporate structure of that defendant.

XIV.

JURISDICTION RETAINED

This Court retains jurisdiction to enable any of the parties 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 or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

XV.

EXPIRATION OF FINAL JUDGMENT

This Final Judgment shall expire five (5) years from the date of entry; provided that, before the expiration of this Final Judgment, plaintiff, after consultation with defendants and in plaintiff's sole discretion, may extend the Judgment, except for Section VI(D), for an additional five years.

XVI.

PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest.

Dated:

_____
United States District Judge

REFERRAL POLICY

I. **General Statement**. After a patient or the patient's family or other appropriate person (collectively "patient") has been identified (via screening, assessment, discharge planning, staff, family, physician, or other means) as being in need of appropriate home health care, hospice, DME, or outpatient rehabilitation services (referred to collectively as "Ancillary Service"), and, if necessary, a physician's order has been obtained, the following procedures will be used by a referring person when connecting patients to the appropriate Ancillary Service. Our focus is on patient choice.

II. **Ancillary Service Referrals**:

A. If a physician orders an Ancillary Service and specifies the provider to be used (whether specifically written in the chart or other written notification), then a referring person shall contact the patient indicating that the physician has ordered an Ancillary Service and has ordered that a particular provider be used. The patient should be asked whether this is acceptable, and if so, referred to that provider. (If the patient does not wish that provider, see subsection B below.)

B. If a physician orders an Ancillary Service, but does not specify the provider to use, then the patient shall contacted and informed that his physician has ordered an Ancillary Service, and shall be asked if he has a preference as to which provider to use:

1. If the patient has a preference, that preference shall honored.

2. If the patient has no preference, a referring person shall indicate that Heartland has an excellent, fully accredited Ancillary Service that is available to the patient, and the appropriate Heartland brochure may be given. If the patient accepts, then the referral shall be made to Heartland's Ancillary Service.

3. If the patient has not accepted Heartland's Ancillary Service (see subsection B(2) above), or asks what other providers are available, a referring person shall state that there are other providers in the community that offer the Ancillary Service; however, the referring person cannot make a recommendation as to these other providers, but there is a listing of them in the telephone book. [PATIENT SHALL BE GIVEN A

REASONABLE AMOUNT OF TIME TO INVESTIGATE OTHER OPTIONS] If the patient at this point chooses a provider, that choice is to be honored. However, if the patient again requests that a referring person provide them with the names of other providers, the social worker should indicate that Heartland has done no independent review or evaluation of these providers and cannot speak to the quality of care they provide, and then verbally name these providers. The patient's choice shall be honored.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
MISSOURI

UNITED STATES OF AMERICA, Plaintiff, vs. HEALTH CHOICE OF NORTHWEST MISSOURI, INC., HEARTLAND HEALTH SYSTEM, INC., AND ST. JOSEPH PHYSICIANS, INC. Defendants.	)	Civil Action No.

STIPULATION

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the Western District of Missouri;

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which

it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court; and

3. Defendants agree to be bound by the provisions of the proposed Final Judgment pending its approval by the Court. If plaintiff withdraws its consent, or if the proposed Final Judgment is not entered pursuant to the terms of the Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or in any other proceeding.

FOR PLAINTIFF, UNITED STATES OF AMERICA:

/s/
Anne K. Bingaman
Assistant Attorney General

/s/
Lawrence R. Fullerton
Chief of Staff

/s/
Rebecca P. Dick
Deputy Director
Office of Operations

/s/
Gail Kursh
Chief
Professions & Intellectual
Property Section
Antitrust Division
U.S. Department of Justice

/s/
Edward D. Eliasberg, Jr.
Dando B. Cellini
Mark J. Botti
John B. Arnett, Sr.
Gregory S. Asciolla
Attorneys
Antitrust Division
U.S. Dept. of Justice
600 E Street, N.W.
Room 9420, BICN Bldg.
Washington, D.C. 20530
(202) 307-0808

FOR DEFENDANT HEALTH CHOICE
OF NORTHWEST MISSOURI, INC.:

/s/
510 Francis Avenue
St. Joseph, MO 64501

FOR DEFENDANT HEARTLAND HEALTH
SYSTEM, INC.

/s/_____
Thomas D. Watkins
Watkins, Boulware, Lucas
Miner, Murphy & Taylor
3101 Frederick Avenu
St. Joseph, MO 64506

FOR DEFENDANT ST. JOSEPH PHYSICIANS, INC.

/s/_____
Richard D. Raskin
Sidley & Austin
One First National Plaza
Chicago, IL 60603
(312)853-2170