**DEPARTMENT OF JUSTICE**
Antitrust Division

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Frederick H. von Unwerth, Esquire
Kilpatrick & Cody
700 13th Street, N.W.
Suite 800
Washington, D.C. 20005

Dear Mr. von Unwerth:

This letter responds to your request, on behalf of National Cardiovascular Network, Inc. ("NCN"), for issuance of a business review letter under the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6, and its Pilot Business Review Program announced on December l, 1992, 58 Fed. Reg. 6132 (1993). You have requested a statement of the Department's current enforcement intention with respect to NCN's proposal to establish a preferred provider organization ("PPO") that would contract with third-party payers to provide cardiac services to beneficiaries of the payers' health insurance plans. For the reasons set forth below, the Department has no present intention of challenging NCN's proposal under the antitrust laws.

From information provided by you and gathered by Antitrust Division staff, we understand that NCN is a nonprofit corporation, founded and managed by cardiologists and cardiovascular surgeons, with its headquarters in Atlanta, Georgia. NCN plans to create a PPO to market the services of a national network of cardiac specialists, acute care hospitals and other health care providers. The PPO would solicit and negotiate contracts with third-party payers (health insurers, unions, and self-insured employers with multiple offices) for the provision of cardiac services to beneficiaries of health insurance plans who reside throughout the country. The PPO's contracts with third-party payers and hospital and physician providers would be "nonexclusive"; that is, both payers and providers would remain free to contract with any other PPO, health maintenance organization, independent practice association, or alternative delivery system.

The PPO's network of participating providers, at least initially, would include cardiac physician specialists and acute care hospitals in 41 metropolitan areas.[1] In the vast majority of these urban areas, the PPO would contract with a single acute care hospital and a single physician group practice, whose members specialize in cardiology and cardiovascular surgery and maintain active admitting privileges at the participating hospital. In several cities, the PPO would contract with an acute care hospital and two physician group practices, one whose members specialize in cardiology and one whose members specialize in cardiovascular surgery. Members of each group would maintain active admitting privileges at the participating hospital.

In three cities (Los Angeles, Milwaukee and Indianapolis), the PPO initially would contract for cardiology or cardiovascular surgery services with two or more competing physician group practices. In these and other cities in which the PPO will recruit competing specialists, participating physicians will not comprise more than 20 percent of the total number of cardiologists, or more than 20 percent of the total number of cardiovascular surgeons, who maintain active admitting privileges in that specialty at acute care hospitals in the relevant geographic market for the provision of those services.

According to NCN's proposal, the PPO would market the services of its network of cardiac care providers nationally. In each city, however, the participating cardiologists, cardiovascular surgeons, and acute care hospital would agree to provide services to beneficiaries of contracting payers at an all-inclusive, "global" price, either a per-procedure (e.g., diagnostic related group) or a per-subscriber (capitated) rate which would cover all hospitalization and physician expenses of plan beneficiaries. Participating providers would agree among themselves on a formula for dividing revenues from the venture. Apart from their negotiations to establish a global rate and to divide revenues from the venture, providers will not exchange price information among themselves. Although the PPO may furnish participating providers with general market price information from publicly available sources, it will not interfere with its providers' ability to establish prices or fees for network (or non-network) business. The PPO will not furnish a participating provider in one city with information regarding the prices charged for network services by providers in other cities. Nor will the PPO collect or disseminate information regarding "usual, customary or reasonable" fees, charges, reimbursement rates, discounts or other prices with respect to the non-network business of its providers.

After considering the information provided by you and from our investigation, the Department has concluded that it has no present intention of challenging on antitrust grounds NCN's proposed PPO. In evaluating physician joint ventures, the Department's competitive

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[1]The selected areas will be: Birmingham, AL; Little Rock, AR; Phoenix, AZ; Los Angeles, CA; Redwood City, CA; Sacramento, CA; San Diego, CA; Bridgeport, CT; Hartford, CT; Washington, DC; Miami, FL; Orlando, FL; Tampa, FL; Atlanta, GA; Des Moines, IA; Chicago (Elmhurst), IL; Indianapolis, IN; Wichita, XS; Houma, LA; New Orleans, LA; Boston, MA; Portland, ME; Detroit (Royal Oak), MI; Minneapolis, MN; Kansas City, MO; Charlotte, NC; Durham, NC; New York, NY; Cincinnati, OH; Cleveland, OH; Columbus, OH; Tulsa, OK; Philadelphia, PA; Pittsburgh, PA; Memphis, TN; Nashville, TN; Dallas, TX; Houston, TX; Spokane, WA; Milwaukee, WI; and Charleston, WV.

analysis focuses on whether the purpose or effect of the venture would be to create, enhance or facilitate the exercise of market power. Specifically, we would be concerned if the formation or operation of NCN's proposed PPO could raise the prices for physician services above competitive levels or prevent the formation of other physician joint ventures that would compete with the proposed PPO. The Department has concluded, however, that the present proposal is unlikely to facilitate or result in such anticompetitive conduct.

In reaching this conclusion, we note that in 38 of the 41 metropolitan areas targeted for entry by NCN, the PPO would contract with a single integrated group practice of cardiologists and cardiovascular surgeons, or with a single integrated group practice of cardiologists and a single integrated group practice of cardiovascular surgeons. Members of an integrated group practice do not compete, and although there may be a few procedures performed by both cardiologists and cardiovascular surgeons, these specialists do not appear to be in meaningful competition with each other. Thus, in these 38 metropolitan areas, the PPO's entry into a nonexclusive contract with a fully integrated group practice or with two groups of specialists who do not compete is unlikely to create, enhance, or facilitate the exercise of market power.

In the three cities in which NCN would contract with competing groups of cardiologists and cardiovascular surgeons -- Los Angeles, Milwaukee and Indianapolis -- the PPO would qualify for the antitrust "safety zone" set forth in the recently issued Statement of Department of Justice and Federal Trade Commission Enforcement Policy on Physician Network Joint Ventures ("enforcement statement"). As explained in the enforcement statement, the Division will not challenge, absent extraordinary circumstances, a physician network joint venture comprised of 20 percent or less of the physicians in each specialty who practice in the relevant geographic market and share substantial financial risk. The proposed PPO would meet each criterion set forth in the enforcement statement.

First, by selling their services to third-party payers at per-procedure or capitated rates, PPO provider participants will share substantial financial risk. Such risk sharing provides a procompetitive justification for otherwise competing providers to act collectively in pricing their services.

Second, the proposed PPO would not be over-inclusive, for in the three metropolitan areas in which it will initially contract with competing physician specialists, and in any other cities in which it will do so in the future, the PPO will not include more than 20% of the specialists with active admitting privileges in any relevant geographic market. Although defining a relevant geographic market is a fact-intensive exercise, the following provides general guidance on how to define such markets.

We begin the analysis by asking price-sensitive third-party payers, such as health maintenance organizations, preferred provider organizations, and self-insured employers, whether they would consider services provided by specialists with active admitting privileges at other acute care hospitals to be good substitutes for services provided by specialists with active admitting privileges at the participating PPO hospital. If they would be, then those specialists

should be included in the relevant geographic market. Applying this reasoning to NCN's PPO, the relevant geographic market will include cardiologists and cardiovascular surgeons with active admitting privileges at the participating PPO hospital and those specialists at all other hospitals that are good substitutes for the cardiology or cardiovascular surgery services provided by the PPO hospital.

As a practical matter, based on our experience, in each of the 41 metropolitan areas, the relevant geographic market for the provision of cardiovascular surgery will probably include all general acute care hospitals in that city.

The relevant geographic markets for the provision of cardiology, however, could be as large as the city or much smaller in area, depending on the metropolitan area. Two examples are illustrative. In Indianapolis, for instance, found that the relevant geographic market for cardiology services includes acute care hospitals throughout the city because payers and health care providers perceive acute care hospitals throughout the city to be good substitutes for the cardiology services provided at St. Vincent Hospital, NCN's participating hospital in Indianapolis.

In Los Angeles, however, we concluded that the relevant geographic market was smaller then the entire Los Angeles metropolitan area and includes cardiologists with active admitting privileges at hospitals in Los Angeles, 8everly Hills and Santa Monica, located south of the Santa Monica mountains. In that area, NCN would contract with Cedars-Sinai Medical Center in Beverly Hills, and payers generally consider acute care hospitals in Los Angeles and south of the Santa Monica mountains to be good substitutes for Cedars Sinai in the provision of cardiology services. NCN's commitment not to recruit over 20% of the cardiologists with active admitting privileges at hospitals in this geographic market means that the joint venture nonetheless falls within the antitrust safety zone.[2]

For the foregoing reasons, the Department has no present intention to challenge NCN's proposed PPO. In accordance with our normal practice, however, the Department remains free to bring whatever action or proceeding it subsequently comes to believe is required by the public interest if the actual operation of this proposal proves to be anticompetitive in purpose or effect.

This statement is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6, a copy of which is enclosed. Pursuant to its terms, your business review request and this letter will be made publicly available immediately. In addition, any supporting

[2]NCN has also built sufficient safeguards into its proposal to deter ancillary agreements and effects that could unreasonably restrict competition. For example, NCN would prohibit the exchange of fee and cost information among competing providers that could facilitate collusion and lead to an increase in prices for cardiology or cardiovascular services.

data that you have not previously identified as business confidential under Paragraph 10(c) of the Business Review Procedure will also be made publicly available.

Sincerely,

/s/

Anne K. Bingaman
Assistant Attorney General

Enclosure