



DEPARTMENT OF JUSTICE
Antitrust Division

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Dr. Oswald L. Mikell, M.D.
242 Lady's Island Drive
Beaufort, South Carolina 29902

Re: Request for Business Review Letter

Dear Dr. Mikell:

This letter responds to your request for the issuance of a business review letter under the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6, regarding a proposed network of dermatologists in the State of South Carolina. The network would act as an agent for the majority of all board-certified dermatologists in the State, in order to facilitate contracting with health maintenance organizations and other managed care entities. For the reasons set forth below, the Department has no present intention to challenge the proposed activities under the antitrust laws.

This opinion is based primarily on the facts as set forth in your one-page letter requesting the business review. As we understand those facts, no agreements, either verbal or written, have as yet been made to form this network. Obviously, our opinion may change if the nature of the network after formation is substantially different from the description in your letter.

According to your proposal, the goal of the network would be to reduce the costs of provision of dermatologic services through reduced administrative costs, utilization review, quality assurance, joint purchasing, and reduced fees. The network would share substantial financial risk either by accepting capitated rates or by withholding a minimum of 20 percent of fees as a risk pool that would be retained by the network or distributed to its members only if promised efficiency goals are achieved. The group would be non-exclusive in nature; dermatologists would be free to join other networks or to contract as individuals with payers.

As we understand your proposal, the network would represent the 85 dermatologists in South Carolina only for their provision of the types of skin treatments that are currently provided by internists, general practitioners, and family practitioners, as well as other types of specialists, such as plastic surgeons and pathologists. You state, and payers confirm, that 60 percent of all care for skin disease is currently provided by doctors who are not dermatologists. Specifically, you propose that inpatient hospital care, and any procedure that dermatologists perform in more than 30 percent of all cases, would not be covered in any contracts handled by the network. Thus, participants in the relevant service market would include dermatologists, internists, general practitioners, family practitioners and other specialists that treat skin disease.

The proposed network will provide services throughout the entire state of South Carolina, but you have provided no information that would enable us to ascertain appropriate geographic

boundaries for local physician markets. Similarly, you have provided no information about the number and location of network dermatologists within particular local markets or the number and location of available non-network substitutes within those markets. Consequently, for the purposes of this letter we will assume that the number of network dermatologists in any relevant local market will not exceed 30 percent of all physicians available to provide services of the type offered by the network in that market.

Based upon these assumed facts, it appears that the members of the joint venture will share substantial financial risk that will provide incentives to achieve cost-containment goals. We also assume that the venture will be non-exclusive in actual operation and that the venture will not be used as a vehicle to facilitate agreements among dermatologists about prices or other competitively sensitive contract terms for services that will not be offered by the network. Because of our assumption that the network members will not exceed 30 percent of the physicians providing any given procedure in any relevant local market, it follows that it is unlikely that the network members would attain market power or cause anticompetitive effects.

Consequently, the Department of Justice has no present intention of challenging the proposed network as described in this letter. 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 network, once formed, proves to be anticompetitive in purpose or effect.

This statement is made in accordance with the Department of Justice 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 data that you have not identified as confidential business information under Paragraph 10(c) of the Business Review Procedure also will be made publicly available.

Sincerely yours,

Anne K. Bingaman
Assistant Attorney General