States District Court for the Western District of Wisconsin, Robert W. Kastenmeier United States Courthouse, 120 North Henry Street, Room 320, Madison, WI 53703–2559. In addition, the proposed Consent Decree may be examined electronically at *http://www.justice.gov/enrd/Consent_Decrees.html*.

Cherie L. Rogers,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 2013–08969 Filed 4–16–13; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Chiropractic Associates, Ltd. of South Dakota Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of South Dakota in *United States of America* v. *Chiropractic Associates Ltd, of South Dakota,* (CASD), Civil Case No. 13–CV–4030–LLP. On April 8, 2013, the United States filed a Complaint alleging that CASD and its members formed a conspiracy to gain more favorable fees and other contractual terms by agreeing to coordinate their actions, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The proposed Final Judgment, filed at the same time as the Complaint, enjoins CASD from establishing prices or terms for chiropractic services.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.justice.gov/atr*, and at the Office of the Clerk of the United States District Court for the District of South Dakota. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be filed with the Court and posted on the U.S. Department of Justice, Antitrust Division's Web site, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Peter J. Mucchetti, Chief, Litigation I Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street NW., Suite 4100, Washington, DC 20530 (telephone: 202–307–0001).

Patricia A. Brink,

Director of Civil Enforcement.

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action against Defendant Chiropractic Associates, Ltd. of South Dakota (''CASD'' or the ''Defendant'') to obtain equitable and other relief to prevent and remedy violations of Section 1 of the Sherman Act, 15 U.S.C. 1. Plaintiff alleges as follows:

I. Nature of the Action

1. CASD is an association of approximately 300 chiropractors who compete with each other in the sale of chiropractic services. CASD's members compromise approximately 80 percent of all chiropractors practicing in South Dakota. On behalf of its members, CASD contracts with health insurers and other payers (collectively, ''payers'').

2. Since 1997, all of CASD's members have entered into membership agreements with CASD that give CASD the right to collectively negotiate rates on their behalf with payers.

3. Since 1997, CASD has negotiated contracts on behalf of its members with at least seven payers. These contracts set the prices and price-related terms between CASD's members and those payers. CASD's conduct has raised the prices of chiropractic services and decreased the availability of chiropractic services in South Dakota.

4. The United States, through this suit, asks this Court to declare CASD's conduct illegal and to enter injunctive relief to prevent further injury to consumers of chiropractic services.

II. Defendant

5. CASD is a company organized and doing business under the laws of the State of South Dakota, with its principal place of business in Brookings.

III. Jurisdiction, Venue, and Interstate Commerce

6. Plaintiff brings this action pursuant to Section 4 of the Sherman Act, 15 U.S.C. § 4, to obtain equitable and other relief to prevent and restrain the Defendant's violations of Section 1 of the Sherman Act, 15 U.S.C. 1.

7. The Court has subject-matter jurisdiction over this action under Section 4 of the Sherman Act, 15 U.S.C. 4, and 28 U.S.C. 1331, 1337(a), and 1345.

8. The Defendant has consented to personal jurisdiction and venue in this District. The Court also has personal jurisdiction over the Defendant, and venue is proper in the District of South Dakota under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391(b), because the Defendant is found, has transacted business, and committed acts in furtherance of the alleged violations in this District. A substantial part of the events giving rise to Plaintiff's claims occurred in this District.

9. The Defendant engages in interstate commerce, and its activities—including the conduct alleged in this Complaint—substantially affect interstate commerce. The Defendant's conduct increased prices for chiropractic services that some non-South Dakota residents traveled to South Dakota to purchase, and for which a number of payers paid across state lines.

IV. Other Conspirators

10. Various persons not named as defendants in this action have participated as conspirators with the Defendant in the offenses alleged and have performed acts and made statements in furtherance of the alleged conspiracies.

V. Defendant's Illegal Conduct

11. Since 1997, CASD has required that chiropractors joining the association enter into a membership agreement (called a ''Provider Agreement'') that authorizes CASD to negotiate the fees that CASD's chiropractors charge payers for health-care related services and products.

12. For years, CASD has had a stated goal of leveraging its contracts with a large share of South Dakota chiropractors to negotiate higher fees from payers for chiropractor members. One CASD official stated that ''the first thing that we felt was very important to us was to establish a fair reimbursement for a full scope of practice.'' Thus, CASD sought to ''[h]ave a membership large enough to negotiate fair and equitable contracts with insurance companies, including Fair Fee Schedules (minimum of 130% of Medicare)[.]''

13. Since 1997, CASD has negotiated at least seven contracts with payers that fix the prices and other price-related terms for all CASD members dealing with those payers. In these negotiations, CASD, acting on behalf of its members, made proposals and counterproposals on price and price-related terms, accepted and rejected offers, and

entered into payer contracts that contractually bound all of CASD's members.

14. CASD's practice of negotiating contracts on behalf of its members has increased prices for chiropractic services in South Dakota.

VI. No Integration

15. CASD's negotiation of contracts on behalf of its members is not ancillary to any procompetitive purpose of CASD or reasonably necessary to achieve any efficiencies. Other than CASD members who are part of the same practice groups, CASD members do not share any financial risk in providing chiropractic services, do not significantly collaborate in a program to monitor and modify their clinical practice patterns to control costs or ensure quality, do not integrate their delivery of care to patients, and do not otherwise integrate their activities to produce significant efficiencies.

VII. Violation Alleged

16. Plaintiff reiterates the allegations contained in paragraphs 1 to 15. Beginning at least as early as 1997, and continuing to date, CASD and its members 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. The combination and conspiracy consisted of an understanding and concert of action among CASD and its members that CASD would coordinate their negotiations with payers to enable the collective negotiation of higher fees from these payers. CASD's actions raised prices for the sale of chiropractic services and decreased the availability of chiropractic services.

VIII. Request for Relief

17. To remedy these illegal acts, the United States of America asks that the Court:

(a) adjudge and decree that the Defendant entered into unlawful contracts, combinations, or conspiracies 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; its successors, assigns, subsidiaries, divisions, groups, partnerships, joint ventures, and each entity over which it has control; their directors, officers, managers, agents, representatives, and employees; and all other persons acting or claiming to act in active concert or participation with one or more of them, from:

i. continuing, maintaining, or renewing in any manner, directly or indirectly, the conduct alleged herein or from engaging in any other conduct, combination, conspiracy, agreement, 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 chiropractic services, or collective negotiation on behalf of competing independent chiropractors or chiropractor groups; and

ii. directly or indirectly communicating with any chiropractor or payer about any actual or proposed payer contract;

(c) award the United States its costs in this action; and

(d) award such other and further relief, including equitable monetary relief, as may be appropriate and the Court deems just and proper.

DATE: April , 2013

FOR PLAINTIFF
UNITED STATES OF AMERICA:
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Competitive Impact Statement

Plaintiff United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The United States has filed a civil antitrust Complaint, alleging that Chiropractic Associates, Ltd. of South Dakota (''CASD'') violated Section 1 of the Sherman Act, 15 U.S.C. 1. CASD negotiated at least seven contracts with payers [1] that set prices for chiropractic services on behalf of CASD's members. This conduct caused consumers to pay higher fees for chiropractic services.

At the same time the United States filed the Complaint, the United States filed a Stipulation and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of CASD's conduct. Under the proposed Final Judgment, which is explained more fully below, CASD is enjoined from contracting with payers on behalf of chiropractors and from facilitating joint contracting among chiropractors.

The United States and CASD have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to punish violations thereof.

II. Description of Events Giving Rise to the Alleged Violation of Antitrust Laws

A. The Defendant

CASD is an association of approximately 300 chiropractors, many of whom compete with each other in the sale of chiropractic services. CASD's members comprise over 80 percent of all

[1] A ''payer'' is a person or entity that purchases or pays for all or part of a physician's services for itself or any other person and includes, but is not limited to, individuals, health insurance companies, health maintenance organizations, preferred provider organizations, and employers.

chiropractors practicing in South Dakota.

B. The Alleged Violations

CASD negotiated contracts with payers on behalf of competing chiropractors with the purpose and effect of increasing fees paid to CASD and its members. This conduct raised prices to consumers of chiropractic services. One CASD official stated that ''the first thing that we felt was very important to us was to establish a fair reimbursement for a full scope of practice.'' Thus, CASD sought to ''[h]ave a membership large enough to negotiate fair and equitable contracts with insurance companies, including Fair Fee Schedules (minimum of 130% of Medicare)[.]''

Since 1997, CASD has negotiated at least seven contracts with payers that set the prices and other terms for all of CASD's members dealing with those payers. In these negotiations, CASD made proposals and counterproposals to payers, and accepted and rejected offers, without consulting CASD's physician members regarding the prices that they would accept. Additionally, CASD entered into contracts with payers on behalf of all members.

CASD requires that each chiropractor joining the association enter into a membership agreement (called a ''Provider Agreement'') that authorizes CASD to negotiate the fees that CASD's chiropractors charge payers for health-care related services and products. Upon joining CASD, therefore, a chiropractor explicitly gives contracting authority to CASD and charges the price that CASD sets in its contracts with payers. CASD's practice of negotiating contracts on behalf of its members increased prices for chiropractic services in South Dakota.

Antitrust law treats naked agreements among competitors that set prices as per se illegal.[2] Where competitors economically integrate in a joint venture, however, such agreements, if reasonably necessary to accomplish the procompetitive benefits of the integration, are analyzed under the rule of reason.[3] CASD's negotiation of contracts on behalf of its members was not ancillary to any procompetitive purpose of CASD or reasonably necessary to achieve any efficiencies. Other than CASD members who are part of the same practice groups, CASD members do not share any financial risk in providing chiropractic services, do not significantly collaborate in a program to monitor and modify their clinical practice patterns to control costs or ensure quality, do not integrate their delivery of care to patients, and do not otherwise integrate their activities to produce significant efficiencies.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment will prevent the recurrence of the violations alleged in the Complaint and restore competition in the sale of chiropractic services in South Dakota. Section IV of the proposed Final Judgment would enjoin CASD from:

(A) providing, or attempting to provide, any services to any physician regarding such physician's actual, possible, or contemplated negotiation or contracting with any payer, or other dealings with any payer;

(B) acting, or attempting to act, in a representative capacity, including as a messenger or in dispute resolution (such as arbitration);

(C) communicating, reviewing, or analyzing, or attempting to communicate, review, or analyze with or for any physician, except as otherwise allowed, about (1) that physician's, or any other physician's, negotiating, contracting, or participating status with any payer; (2) that physician's, or any other physician's, fees or reimbursement rates; or (3) any proposed or actual contract or contract term between any physician and any payer;

(D) facilitating communication or attempting to facilitate communication, among or between physicians, regarding any proposed, contemplated, or actual contract or contractual term with any payer, including the acceptability of any proposed, contemplated, or actual contractual term, between such physicians and any payer;

(E) entering into or enforcing any agreement, arrangement, understanding, plan, program, combination, or conspiracy with any payers or physicians to raise, stabilize, fix, set, or coordinate prices for physician services, or fixing, setting, or coordinating any term or condition relating to the provision of physician services;

(F) requiring that CASD physician members negotiate with any payer through CASD or otherwise restricting, influencing, or attempting to influence in any way how CASD physician members negotiate with payers;

(G) coordinating or communicating, or attempting to coordinate or communicate, with any physician, about any refusal to contract, threatened refusal to contract, recommendation not to participate or contract with any payer, or recommendation to boycott, on any proposed or actual contract or contract term between such physician and any payer;

(H) responding, or attempting to respond, to any question or request initiated by any payer or physician relating to (1) a physician's negotiating, contracting, or participating status with any payer; (2) a physician's fees or reimbursement rates; or (3) any proposed or actual contract or contract term between any physician and any payer, except to refer a payer to a third-party messenger[4] and otherwise to state that the Final Judgment prohibits any additional response; and

(I) training or educating, or attempting to train or educate, any physician in any aspect of contracting or negotiating with any payer, including, but not limited to, contractual language and interpretation thereof, methodologies of payment or reimbursement by any payer for such physician's services, and dispute resolution such as arbitration, except that CASD may, provided it does not violate other prohibitions of the Final Judgment, (1) speak on general topics (including contracting), but only when invited to do so as part of a regularly scheduled medical educational seminar offering continuing medical education credit; (2) publish articles on general topics (including contracting) in a regularly disseminated newsletter; and (3) provide education to physicians regarding the regulatory structure (including legislative developments) of workers' compensation, Medicaid, and Medicare, except Medicare Advantage.

But the Final Judgment does not enjoin CASD from providing

[2] *See* Statement 8(B)(1) of the 1996 Statements of Antitrust Enforcement Policy in Health Care *available at http://www.justice.gov/atr/public/guidelines/1791.htm.*

[3] *Id.* (further explaining that ''In accord with general antitrust principles, physician network joint ventures will be analyzed under the rule of reason, and will not be viewed as per se illegal, if the physicians' integration through the network is likely to produce significant efficiencies that benefit consumers, and any price agreements (or other agreements that would otherwise be per se illegal) by the network physicians are reasonably necessary to realize those efficiencies.'')

[4] A messenger is a person or entity that operates a messenger model, which is an arrangement designed to minimize the costs associated with the contracting process between payers and health-care providers. Messenger models can operate in a variety of ways. For example, network providers may use an agent or third party to convey to purchasers information obtained individually from providers about the prices or price-related terms that the providers are willing to accept. In some cases, the agent may convey to the providers all contract offers made by purchasers, and each provider then makes an independent, unilateral decision to accept or reject the contract offers. *See* Statement 9(C) of the 1996 Statements of Antitrust Enforcement Policy in Health Care, *available at http://www.justice.gov/atr/public/guidelines/1791.htm.*

credentialing services[5] and utilization review services.[6] Credentialing services can provide an efficient and cost-effective way to ensure that physicians are qualified, competent, and properly licensed. Utilization review services can provide a mechanism to monitor and control utilization of health care services, control costs, and assure quality of care. Consequently, the provision of these services could potentially benefit consumers.

With limited exceptions, Section V of the proposed Final Judgment requires CASD to terminate all payer contracts at the earlier of (1) CASD's receipt of a payer's written request to terminate its contract, (2) the earliest termination date, renewal date (including automatic renewal date), or the anniversary date of such payer contract, or (3) three months from the date the Final Judgment is entered. Furthermore, the Final Judgment immediately makes void any clause in a provider agreement that disallows a physician from contracting individually with a Payer.

Section VI of the proposed Final Judgment permits CASD to engage in activities that fall within the safety zone set forth in Statement 6 of the 1996 Statements of Antitrust Enforcement Policy in Health Care, 4 Trade Reg. Rep. (CC) ¶ 13,153. Moreover, nothing in the proposed Final Judgment prohibits CASD or its members from advocating or discussing, in accordance with the doctrine established in *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.,* 365 U.S. 127 (1961) and its progeny, legislative, judicial, or regulatory actions, or other governmental policies or actions.

To promote compliance with the decree, Section VII of the proposed Final Judgment requires that CASD provide to its members, directors, officers, managers, agents, employees, and representatives, who provide or have provided, or supervise or have supervised the provision of services to physicians, copies of the Final Judgment and this Competitive Impact Statement and to institute mechanisms to facilitate compliance. For a period of ten years following the date of entry of the Final Judgment, CASD must certify annually to the United States whether it has complied with the provisions of the Final Judgment.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against CASD.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and CASD have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet Web site, and, under certain circumstances, published in the **Federal Register**. Written comments should be submitted to: Peter J. Mucchetti, Chief, Litigation I Section, Antitrust Division, United States Department of Justice, 450 Fifth Street NW., Suite 4100, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against CASD. The United States is satisfied, however, that the relief in the proposed Final Judgment will prevent the recurrence of violations alleged in the Complaint and preserve competition for payers and consumers of chiropractic services in South Dakota. Thus, the proposed Final Judgment would achieve all or substantially all of the relief that the United States would have obtained through litigation, while avoiding the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the

[5] The proposed Final Judgment defines ''credentialing services'' to mean a service that recognizes and attests that a physician is both qualified and competent, and that verifies that a physician meets standards as determined by an organization by reviewing such items as the individual's license, experience, certification, education, training, malpractice and adverse clinical occurrences, clinical judgment, and character by investigation and observation.

[6] The proposed Final Judgment defines ''utilization review services'' to mean a service that CASD provides to a Payer that establishes mechanisms to monitor and control utilization of health care services and that is designed to control costs and assure quality of care by monitoring over-utilization of health care services, provided that such mechanisms are not used or designed to increase costs or utilization of health care services.

defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public-interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable.'').[7]

As the United States Court of Appeals for the District of Columbia Circuit has held, a court considers under the APPA, among other things, the relationship between the remedy secured and the specific allegations set forth in the United States' complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001). Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.''* More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[8] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' ''prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case'').

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Alum. Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As the United States District Court for the District of Columbia confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of using consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). This language effectuates what Congress intended when it enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public-interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[9]

[7] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for courts to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[8] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''); *see generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

[9] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298 at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: April ____, 2013.

Respectfully submitted,

_____

Richard Mosier
(D.C. Bar No. 492489),
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EXHIBIT A

Final Judgment

Whereas, Plaintiff, the United States of America, filed its Complaint on April____, 2013, alleging that Defendant, Chiropractic Associates, Ltd. of South Dakota, engaged in conduct in violation of Section 1 of the Sherman Act, as amended, 15 U.S.C. 1, and Plaintiff and Defendant have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law;

And whereas, this Final Judgment does not constitute any admission by Defendant that the law has been violated or of any issue of fact or law, other than an admission that the jurisdictional facts alleged in the Complaint are true;

And Whereas, the essence of this Final Judgment is to restore competition, as alleged in the Complaint, and to restrain Defendant from participating in any unlawful conspiracy to increase fees for Physician services;

And Whereas, the United States requires Defendant to be enjoined from rendering services to, or representing, any Physician pertaining to such Physician's dealing with any Payer, for the purpose of preventing future violations of Section 1 of the Sherman Act;

And Whereas, Defendant agrees to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, Plaintiff requires Defendant to agree to undertake certain actions and refrain from certain conduct for the purpose of remedying the loss of competition alleged in the Complaint.

And Whereas, Defendant has represented to the United States that the actions and conduct restrictions can and will be undertaken and that it will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

Now Therefore, before any testimony is taken, without trial or adjudication of any issue of law or fact, and upon consent of Plaintiff and Defendant, it is *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 a claim upon which relief may be granted against Defendant under Section 1 of the Sherman Act, as amended, 15 U.S.C. 1.

II. Definitions

As used in this Final Judgment:

(A) ''Communicate'' means to discuss, disclose, transfer, disseminate, or exchange information or opinion, formally or informally, directly or indirectly, in any manner;

(B) ''Credentialing Services'' means a service that recognizes and attests that a physician is both qualified and competent, and that verifies that a physician meets standards as determined by an organization by reviewing such items as the individual's license, experience, certification, education, training, malpractice and adverse clinical occurrences, clinical judgment, and character by investigation and observation;

(C) ''Defendant'' or ''CASD'' means the Chiropractic Associates, Ltd. of South Dakota, a company organized and doing business under the laws of South Dakota; its successors, assigns, subsidiaries, divisions, groups, partnerships, joint ventures, and each entity over which it has control, including Chiropractic Associates of North Dakota, LLC, Chiropractic Associates of Minnesota, LLC, Chiropractic Associates of Iowa, LLC; and their directors, officers, managers, agents, representatives, and employees;

(D) ''Messenger'' means the Defendant when it Communicates to a Payer any information Defendant has received from a Physician, or Communicates to any Physician any information Defendant receives from any Payer;

(E) ''Participating Provider Agreement'' means a contract entered into by a Physician with CASD that allows the Physician to participate in a Payer Contract;

(F) ''Payer'' means any Person that purchases or pays for all or part of a Physician's services for itself or any other Person and includes, but is not limited to, individuals, health insurance companies, health maintenance organizations, preferred provider organizations, and employers;

(G) ''Payer Contract'' means a contract entered into by a Payer with CASD that sets the prices and price-related terms between CASD's Physician members and the Payer;

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

(I) ''Physician'' means a doctor of chiropractic medicine (DC), a doctor of allopathic medicine (M.D.), or any other practitioner of chiropractic, allopathic, or other medicine;

(J) ''Third-Party Messenger'' means a Person other than Defendant that uses a ''messenger model'' as set forth in Statement 9(C) of the 1996 Statements of Antitrust Enforcement Policy in Health Care, 4 Trade Reg. Rep (CC) ¶ 13,153, provided that the messenger model does not create or facilitate an agreement among competitors on prices or price-related terms;

(K) ''Utilization Review Services'' means a service that Defendant provides to a Payer that establishes mechanisms to monitor and control utilization of health care services and that is designed to control costs and assure quality of care by monitoring over-utilization of health care services, provided that such mechanisms are not used or designed to increase costs or utilization of health care services.

III. Applicability

This Final Judgment applies to Defendant and to any Person, including any Physician, in active concert or participation with Defendant, who receives actual notice of this Final Judgment by personal service or otherwise.

IV. Prohibited Conduct

Defendant is enjoined from, in any manner, directly or indirectly:

(A) Providing, or attempting to provide, any services to any Physician regarding such Physician's actual, possible, or contemplated negotiation or contracting with any Payer, or other dealings with any Payer;

(B) acting, or attempting to act, in a representative capacity, including as a Messenger or in dispute resolution (such as arbitration), for any Physician with any Payer;

(C) Communicating, reviewing, or analyzing, or attempting to Communicate, review, or analyze with or for any Physician, except as consistent with Section VI(A), about (1) that Physician's, or any other Physician's, negotiating, contracting, or participating status with any Payer; (2) that Physician's, or any other Physician's, fees or reimbursement rates; or (3) any proposed or actual contract or contract term between any Physician and any Payer;

(D) facilitating Communication or attempting to facilitate Communication, among or between Physicians, regarding any proposed, contemplated, or actual contract or contractual term with any Payer, including the acceptability of any proposed, contemplated, or actual contractual term, between such Physicians and any Payer;

(E) entering into or enforcing any agreement, arrangement, understanding, plan, program, combination, or conspiracy with any Payers or Physicians to raise, stabilize, fix, set, or coordinate prices for Physician services, or fixing, setting, or coordinating any term or condition relating to the provision of Physician services;

(F) requiring that CASD Physician members negotiate with any Payer through CASD or otherwise restricting, influencing, or attempting to influence in any way how CASD Physician members negotiate with Payers;

(G) coordinating or Communicating, or attempting to coordinate or Communicate, with any Physician, about any refusal to contract, threatened refusal to contract, recommendation not to participate or contract with any Payer, or recommendation to boycott, on any proposed or actual contract or contract term between such Physician and any Payer;

(H) responding, or attempting to respond, to any question or request initiated by any Payer or Physician relating to (1) a Physician's negotiating, contracting, or

participating status with any Payer; (2) a Physician's fees or reimbursement rates; or (3) any proposed or actual contract or contract term between any Physician and any Payer, except to refer a Payer to a Third-Party Messenger and otherwise to state that this Final Judgment prohibits any additional response; and

(I) training or educating, or attempting to train or educate, any Physician in any aspect of contracting or negotiating with any Payer, including, but not limited to, contractual language and interpretation thereof, methodologies of payment or reimbursement by any Payer for such Physician's services, and dispute resolution such as arbitration, except that Defendant may, provided it does not violate Sections IV(A) through IV(H) of this Final Judgment, (1) speak on general topics (including contracting), but only when invited to do so as part of a regularly scheduled medical educational seminar offering continuing medical education credit; (2) publish articles on general topics (including contracting) in a regularly disseminated newsletter; and (3) provide education to physicians regarding the regulatory structure (including legislative developments) of workers' compensation, Medicaid, and Medicare, except Medicare Advantage.

Provided however, that Section IV does not enjoin Defendant from providing Credentialing Services and Utilization Review Services.

V. Required Conduct

(A) Defendant must terminate, without penalty or charge, and in compliance with any applicable laws, any Payer Contracts at the earlier of (1) receipt by Defendant of a Payer's written request to terminate such Payer Contract, (2) the earliest termination date, renewal date (including automatic renewal date), or the anniversary date of such Payer Contract, or (3) three months from the date the Final Judgment is entered.

Provided however, a Payer Contract to be terminated pursuant to Section V(A)(2) of this Final Judgment may extend beyond any such termination, renewal, or anniversary date, by up to three months from the date the Final Judgment is entered, if:

(a) The Payer submits to Defendant a written request to extend such Payer Contract to a specific date no later than three months from the date that this Final Judgment is entered; and

(b) Defendant had determined not to exercise any right to terminate.

Provided further, that any Payer making such request to extend a Payer Contract retains the right, pursuant to Section V(A) of this Final Judgment, to terminate the Payer Contract at any time.

(B) Defendant must terminate, without penalty or charge, and in compliance with any applicable laws, any Participating Provider Agreement and all other contracts relating to Payers with any CASD members at the earlier of (1) receipt by Defendant of any Physician member's written request to terminate such Participating Provider Agreement, (2) the date all Payer Contracts applicable to a Physician member are terminated pursuant to Section V(A), or (3) three months from the date the Final Judgment is entered. Defendant may distribute a revised membership agreement to its Physician members that omits any reference to collectively contracting with Payers or other services prohibited by Section IV, and that otherwise does not violate this Final Judgment.

VI. Permitted Conduct

(A) Defendant may engage in activities that fall within the safety zone set forth in Statement 6 of the 1996 Statements of Antitrust Enforcement Policy in Health Care, 4 Trade Reg. Rep. (CC) ¶ 13,153.

(B) Nothing in this Final Judgment shall prohibit Defendant, or any one or more of CASD's members, from advocating or discussing, in accordance with the doctrine established in *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.,* 365 U.S. 127 (1961), *United Mine Workers* v. *Pennington,* 381 U.S. 657 (1965), and their progeny, legislative, judicial, or regulatory actions, or other governmental policies or actions.

VII. Compliance

To facilitate compliance with this Final Judgment, Defendant shall:

(A) Distribute by first-class mail within 30 days from the entry of this Final Judgment a copy of the Final Judgment; the Competitive Impact Statement; and a cover letter that is identical in content to Exhibit A to:

(1) All of CASD's directors, officers, managers, agents, employees, and representatives, who provide or have provided, or supervise or have supervised the provision of, services to Physicians; and

(2) all of CASD's Physician members;

(B) distribute by first-class mail within 30 days from the entry of this Final Judgment a copy of the Final Judgment; the Competitive Impact Statement; and a cover letter that is identical in content to Exhibit B to the chief executive officer of each Payer with whom CASD has contracted since January 1, 2002, regarding contracts for the provision of Physician services;

(C) distribute a copy of this Final Judgment and the Competitive Impact Statement to:

(1) any Person who succeeds to a position with CASD described in Section VII(A)(1), in no event shall such distribution occur more than 15 days later than such a Person assumes such a position; and

(2) any Physician who becomes a member of CASD, in no event shall such distribution occur more than 15 days later than such Physician becomes a member;

(D) conduct an annual seminar explaining to all of CASD's directors, officers, managers, agents, employees, and representatives, the restrictions contained in this Final Judgment and the implications of violating the Final Judgment;

(E) maintain an internal mechanism by which questions about the application of the antitrust laws and this Final Judgment from any of CASD's directors, officers, managers, agents, employees, and representatives can be answered by counsel as the need arises;

(F) within ten days of receiving a Payer's written request to terminate a Payer Contract pursuant to Section V(A) of this Final Judgment, distribute, by first-class mail, return receipt requested, a copy of that request to each Physician in such Payer Contract as of the date that CASD receives such request to terminate; and

(G) maintain for inspection by Plaintiff a record of recipients to whom this Final Judgment and Competitive Impact Statement have been distributed.

VIII. Certification

(A) Within 30 days after entry of this Final Judgment, Defendant shall certify to the Chief of the Litigation I Section, Antitrust Division, United States Department of Justice, that it has provided a copy of this Final Judgment to all Persons described in Sections VII(A) and VII(B) of this Final Judgment.

(B) For a period of ten years following the date of entry of this Final Judgment, Defendant shall certify to the Chief of the Litigation I Section, Antitrust Division, United States Department of Justice, annually on the anniversary date of the entry of this Final Judgment that each, respectively, and all of CASD's directors, officers, managers, agents, employees, and representatives, if applicable, have complied with the provisions of this Final Judgment.

IX. Compliance Inspection

(A) For the purposes of determining or securing compliance with this Final Judgment or determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, authorized representatives of the United States Department of Justice, including consultants and other Persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and upon five days notice to Defendant, be permitted:

(1) Access during CASD's regular business hours to inspect and copy, or, at the United States' option, to require that Defendant provide copies of all books, ledgers, accounts, records and documents in its possession, custody, or control, relating to any matters contained in this Final Judgment;

(2) to interview, either informally or on the record, any of CASD's officers, directors, employees, agents, managers, and representatives, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendant; and

(3) to obtain from Defendant written reports or responses to written interrogatories, under oath if requested, relating to any matters contained in this Final Judgment.

(B) No information or documents obtained by the means provided in this Section shall be divulged by Plaintiff to any Person other than authorized representatives of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(C) If at any time Defendant furnishes information or documents to the United

States, Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give Defendant ten calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which such Defendant is not a party.

X. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XI. Expiration of Final Judgment

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

XII. Public Interest Determination

The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

Dated: _____

_____
UNITED STATES DISTRICT JUDGE

Exhibit A

[Letterhead of CASD]
[Name and Address of Member]
Dear Member:

The United States District Court for the District of South Dakota has entered a Final Judgment prohibiting the Chiropractic Associates, Ltd., of South Dakota (''CASD'') from collectively contracting with payers or engaging in other anticompetitive activities. A copy of the Final Judgment and a Competitive Impact Statement prepared in accordance with the Antitrust Penalties and Procedures Act, 15 U.S.C. 16, are enclosed.

In order that you may readily understand the terms of the Final Judgment, we have set forth its essential provisions and describe its application to CASD's payer contracting activities, although you must realize the Final Judgment is controlling, rather than the following explanation of provisions.

(1) CASD is prohibited from negotiating or contracting with payers on behalf of any physician, except to provide credentialing and utilization review services.

(2) CASD is prohibited from reviewing or analyzing any contractual terms between a physician and a payer, and is prohibited from communicating about a physician's negotiation or contracting with any payer.

(3) CASD is prohibited from engaging in conduct that promotes members' collective boycotts or refusals to contract with payers.

(4) CASD may not require that CASD members negotiate with payers through CASD.

(5) CASD may not respond to any question or request initiated by a payer relating to (a) a physician's negotiating, contracting, or participating status with any payer; (b) a physician's fees or reimbursement rates; or (c) any proposed or actual contract or contract term between any physician and any payer, except to refer a payer to a third-party messenger and otherwise to state that the Final Judgment prohibits any additional response. Provided however, that the Final Judgment does not enjoin CASD from providing credentialing services and utilization review services.

(6) All of CASD's contracts with payers currently in effect generally must be cancelled upon, whichever comes first, written request by a payer to terminate, the termination date, renewal date, or anniversary date of such contract, or within three months from the date of the entry of the Final Judgment.

(7) All of CASD's contracts with its members currently in effect must be cancelled upon, whichever comes first, written request by a member to terminate, when all payer contracts between CASD and a payer applicable to that member have been terminated, or within three months from the date of the entry of the Final Judgment. Provided, however, that nothing shall prohibit CASD and its member from entering into new membership agreements that comply with the terms of the Final Judgment. CASD will send you under separate cover a new membership agreement that complies with the terms of the Final Judgment.

(8) CASD members and its practice groups may immediately contract individually with payers.

If you have any questions, please do not hesitate to contact me.

Sincerely,

[Appropriate CASD representative]

Exhibit B

[Letterhead of CASD]
[Name and Address of Payer's CEO]
Dear [_____]:

Enclosed is a copy of a Final Judgment, issued by the United States District Court for the District of South Dakota, and a Competitive Impact Statement, issued in accordance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, against the Chiropractic Associates, Ltd., of South Dakota.

Pursuant to Section V Paragraph A of the Final Judgment, all payer contracts with CASD will terminate at the earlier of (1) receipt by CASD of a payer's written request to terminate such contract, (2) the earliest termination date, renewal date (including automatic renewal date), or the anniversary date of such contract, or (3) three months from the date the Final Judgment is entered. CASD members and their practice groups may immediately contract individually with payers.

If your contract expires prior to a date that is three months from the date the Final Judgment is entered, you may request an extension of the contract to a date no later than three months from the date the Final Judgment is entered. If you choose to extend the term of the contract to the extent permitted by the Final Judgment, you may later terminate the contract at any time.

Any request to either to terminate or extend the contract should be made in writing, and should be sent to me at the following address: [address].

Sincerely,

[Appropriate CASD representative]

[FR Doc. 2013–09035 Filed 4–16–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Veterans Supplement to the Current Population Survey

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) titled, ''Veterans Supplement to the Current Population Survey,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before May 17, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMAIN,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–BLS, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free