

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is made and entered into as of the 17th day of March, 1995, by and between the Commonwealth of Virginia (the "Commonwealth"), acting by and through its Attorney General, Physicians Group, Inc. ("PGI"), a Virginia corporation, and the following present and former members of the PGI board: Edwin J. Harvie, Jr., M.D., Lawrence G. Fehrenbaker, M.D., Eric N. Davidson, M.D., Milton Greenberg, M.D., William W. Henderson, IV, M.D., Douglas W. Shiflett, M.D., and Noah F. Gibson, IV, M.D. ("Settling Physicians").

RECITALS

The following recitals are part of, and are expressly incorporated into, the terms and consideration constituting this Agreement:

(A) The Commonwealth will file in the U.S. District Court for the Western District of Virginia, Danville Division, a Complaint in a form identical to that attached hereto as Appendix A, initiating a civil action contemporaneously with the execution of this Agreement. The civil action will allege that the Settling Physicians and other unnamed physicians conspired to boycott the Key Advantage health insurance plan, the Virginia Health Network and other managed care plans in violation of the Sherman Act, 15 U.S.C. § 1, and the Virginia Antitrust Act, Va. Code § 59.1-9.5.

(B) The Commonwealth, PGI and the Settling Physicians desire to settle any and all potential claims or causes of action against PGI, the Settling Physicians and the physician members of PGI

listed in Appendix B, which are or could have been asserted by the Commonwealth in its Complaint, arising out of, by reason of, in connection with, or which relate in any way to the recruitment of physicians in the Danville and Pittsylvania County area of Virginia, by Trigon Blue Cross and Blue Shield and its predecessor, Blue Cross and Blue Shield of Virginia ("Blue Cross"), the Department of Personnel and Training of the Commonwealth of Virginia ("DPT"), or representatives of other managed care plans and third-party payors, to participate in the Key Advantage health insurance plan, the Virginia Health Network, or other managed care plans or third-party payor health insurance plans, prior to the date of this Agreement. The Commonwealth, PGI and the Settling Physicians agree to settle the above potential claims and causes of action in exchange for certain injunctive provisions against PGI and the Settling Physicians and payment by PGI and the Settling Physicians of money damages, civil penalties and an amount payable to the Revolving Account of the Antitrust and Consumer Litigation Section of the Office of the Attorney General, all as provided for in this Agreement. The Settling Physicians and PGI deny liability, but agree to such full and final settlement and complete accord and satisfaction.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and legal sufficiency of which are acknowledged, the parties agree as follows:

1. As used in this Agreement:

(A) "Physician" means a doctor of medicine or osteopathy.

(B) "Participation agreement" means any agreement or contract, oral or written, directly between any physician and any third-party payor, that sets forth the terms, including compensation, under which a physician will provide covered services to covered persons.

(C) "Third-party payor" means any person or entity that reimburses for, purchases, or pays for health care services provided to any other person and includes, but is not limited to, health maintenance organizations, preferred provider organizations, health insurance companies, prepaid hospital, medical, or other health service plans such as Blue Shield and Blue Cross plans, government health benefits programs, administrators of self-insured health benefits programs, and employers or other entities providing self-insured health benefits programs.

(D) "Key Advantage" means the Key Advantage health insurance plan for employees of the Commonwealth of Virginia and their dependents administered by Trigon Blue Cross and Blue Shield and its predecessor, Blue Cross and Blue Shield of Virginia.

(E) "Integrated joint venture" means a joint arrangement to provide health care services in which all physicians participating in the venture who would otherwise be competitors (1) pool their capital to finance the venture, by themselves or together with others, and (2) share substantial risk of loss from their participation in the venture.

2. Settling Physicians and PGI agree to forthwith cease and desist from, directly or indirectly:

(A) Entering into, attempting to enter into, organizing, continuing, or acting in furtherance of any agreement or combination, express or implied, with any physicians or among any physicians, to discuss or collectively determine terms, conditions or requirements upon which any physician(s) will or will not deal with any third-party payor, or to discuss or collectively determine the fees which any physician(s) will charge to any third-party payor; and

(B) Entering into, attempting to enter into, organizing, continuing, or acting in furtherance of any agreement or combination, express or implied, with any physicians or among any physicians, to negotiate, deal, or refuse to deal with any third-party payor on collectively determined terms.

3. PROVIDED THAT, nothing in Paragraph 2 shall prohibit PGI and its current or former member physicians, including the Settling Physicians, from:

(A) Forming or becoming an integrated joint venture and dealing with any third-party payor on collectively determined terms in that capacity. Activity specifically not prohibited in the context of such an integrated joint venture shall include, among other things, the following:

(1) Upon the request of a third-party payor, or as part of an integrated joint venture, performing utilization review or credentialing activities in connection with the provision of

services by physicians who are members of the integrated joint venture to subscribers of the third-party payor;

(2) Upon the request of a third-party payor, participating with other physicians in bona fide utilization review, quality assurance, or credentialing activities in connection with the provision of physician services to subscribers of that third-party payor; and

(3) Upon the request of a third-party payor, providing information to that third-party payor on fees charged in individual cases by physicians who are members of the integrated joint venture;

(B) Providing information or views, individually or collectively with other physicians through either an integrated joint venture or through an entity described in Paragraph 4, to any third-party payor concerning any issue, including reimbursement; and

(C) Collecting historical data concerning fees and charges for the purpose of providing such data to third-party payors.

4. FURTHER PROVIDED THAT nothing in Paragraph 2 shall prohibit individual physician members of PGI, including the Settling Physicians, who practice together as partners, shareholders, principals or employees in the same professional corporation, professional limited liability company, partnership or other bona fide group practice, from collectively engaging in activities otherwise prohibited by Paragraph 2.

5. For and in consideration of the terms of this settlement, PGI and the Settling Physicians, collectively, agree to pay the Commonwealth, and the Commonwealth agrees to accept, the sum of ONE HUNDRED AND SEVENTY THOUSAND DOLLARS AND ZERO CENTS (\$170,000.00), to be allocated as follows: TWENTY THOUSAND, FIVE HUNDRED AND THIRTY-FOUR DOLLARS AND ZERO CENTS (\$ 20,534.00) for money damages; FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$ 50,000.00) for civil penalties; and NINETY-NINE THOUSAND, FOUR HUNDRED AND SIXTY-SIX DOLLARS AND ZERO CENTS (\$ 99,466.00) to the Revolving Account of the Antitrust and Consumer Litigation Section of the Office of the Attorney General.

6. PGI and the Settling Physicians agree to make the payments provided for in Paragraph 5 to the Commonwealth by delivery of a certified or cashier's check to the Office of the Attorney General, made payable to the Treasurer of Virginia, within ten (10) days after entry of the Consent Final Judgment (attached hereto as Appendix C to the Agreement).

7. The Commonwealth, Settling Physicians and PGI agree to execute for filing in the U.S. District Court for the Western District of Virginia, Danville Division, a Consent Final Judgment in a form identical to that attached hereto as Appendix C. The Commonwealth will file the Complaint attached hereto as Appendix A, and such Consent Final Judgment, upon execution of this Agreement. All covenants and agreements herein, including payment of the sums set forth in Paragraph 5 hereof, are specifically conditioned upon the Court entering the Consent Final Judgment substantially in the

form attached as Appendix C.

8. It is understood and agreed that the execution of this Agreement, and the payments referred to above, are for purposes of settlement only and that Settling Physicians and PGI do not admit that they have violated the federal or state antitrust or any other laws or that they have engaged in any other wrongdoing, and expressly deny the same.

9. The Commonwealth agrees not to bring any criminal claim or other action, other than a suit to enforce or interpret the provisions contained in this Agreement and the Consent Final Judgment as entered by the Court, against any of the Settling Physicians or PGI, any current or former physician members of PGI listed in Appendix B, or any of their respective present or former employees, relating to or arising out of any matter released as provided in Paragraph 10 below.

10. This Agreement resolves the allegations made by the Commonwealth against the Settling Physicians, PGI and current and former physician members of PGI listed in Appendix B, which are set forth in the Complaint attached hereto as Appendix A. The Commonwealth does hereby forever release, discharge and covenant not to sue Settling Physicians, PGI and any of PGI's present or former physician members listed in Appendix B, and their respective employees, personal representatives, successors, assigns and heirs, from any and all present or future claims, lawsuits, demands, causes of action or other administrative or judicial proceedings, whether known or unknown, that the Commonwealth has asserted in the

Complaint or could have asserted against the Settling Physicians, PGI and physician members of PGI listed in Appendix B, including specifically, but not limited to, any parens patriae count the Commonwealth could have brought under Virginia Code § 59.1-9.15(d), relating to, arising out of, or concerning the recruitment of physicians in the Danville and Pittsylvania County area of Virginia, by Blue Cross, DPT or representatives of other managed care plans and third-party payors, to participate in the Key Advantage health insurance plan, the Virginia Health Network or any other managed care plans or third-party payor health insurance plans, prior to the date of this Agreement. The Commonwealth also agrees that it will not seek additional sums from the Settling Physicians, PGI or physician members of PGI listed in Appendix B, for damages allegedly caused by any alleged co-conspirators of the conspiracy or combination alleged in the Complaint.

11. Notwithstanding the provisions within Paragraph 10, nothing in this Agreement is, acts, operates as or shall serve as a release, or be construed as a release concerning entities or persons not released herein, or otherwise prohibit the Commonwealth, acting by and through its Attorney General, or any other authorized government official, from seeking and obtaining any and all available relief against entities or persons not released herein, or from fully litigating and obtaining a recovery against any such entities or persons.

12. This Agreement has been carefully reviewed by each of the parties hereto, and shall be binding upon, and inure to the

benefit of those parties, and their respective predecessors, successors, personal representatives, heirs and assigns. Each person executing this document on behalf of a party represents that he or she has full authority to bind the entity for whom he or she signs.

13. Neither this Settlement Agreement nor any of the terms hereof may be offered into evidence or referred to in any subsequent litigation against PGI, its physician members listed in Appendix B, and/or the Settling Physicians, other than in a suit to enforce or interpret the provisions contained in this Agreement and the Consent Final Judgment as entered by the Court.

14. This Agreement constitutes the entire agreement between the parties with regard to the subject matter hereof and may not be modified or amended except in a writing signed by all parties hereto. All prior negotiations, discussions and communications in connection with the negotiation and execution of this Agreement shall be deemed superseded and otherwise merged, integrated and made a part of this Agreement.

15. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

16. This Agreement shall be executed by the parties and shall become effective when executed by all of the parties.

AGREED AND CONSENTED TO:

COMMONWEALTH OF VIRGINIA,
BY ITS ATTORNEY GENERAL,
JAMES S. GILMORE, III

By: *Frank Seales, Jr.*
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By: *Edwin J. Harvie, Jr.*
Edwin J. Harvie, Jr., President

SETTLING PHYSICIANS

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ERIC N. DAVIDSON, M.D.

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