DOPS (Danbury Hospital's affiliated multispecialty practice group).

In 1993, DHS took steps to form an alliance with virtually every doctor on its Hospital's medical staff to protect the economic interests of both the Hospital and the doctors and forestall the continued development of managed care plans in Danbury. On May 6, 1994, HealthCare Partners was incorporated to represent jointly Danbury Hospital and physicians in negotiations with managed care organizations, and DAIPA was created as the vehicle for physician ownership in HealthCare Partners. Danbury Hospital and DAIPA jointly own HealthCare Partners, and each appoints six of the twelve directors of HealthCare Partners' board of directors.

Only active members of Danbury Hospital's medical staff could be owners of DAIPA. Over 98% of the doctors on Danbury Hospital's medical staff joined DAIPA. Each paid a small fee. None committed to any integration of their practices.

Each doctor who joined DAIPA contracted with HealthCare Partners and authorized it to negotiate fees on the doctor's behalf. The doctors authorized HealthCare Partners to enter into nonrisk-bearing contracts in one of two ways.<sup>1</sup>

First, it could prepare a minimum fee schedule and present it to each doctor for approval. A doctor's approval would then authorize HealthCare Partners to enter into non-risk-bearing contracts on behalf of the doctor without further consultation so long as the resulting fees equalled or exceeded the minimum fee schedule.

Alternatively, HealthCare Partners could negotiate fees on behalf of all the doctors and then present each doctor with the collectively negotiated fee schedule. Each doctor would then have the opportunity to accept this jointly negotiated fee schedule.

HealthCare Partners negotiated two contracts using this latter approach and succeeded in obtaining generous fees for the DAIPA doctors. Indeed, one of the contracting managed care plans was forced to increase its fees to doctors outside of the Danbury area to avoid the excessive administrative costs it would have incurred to administer one fee schedule for Danbury and a separate schedule for the other areas in which it operated.

The Hospital's goal in forming HealthCare Partners was to eliminate competition among physicians in order to further its broader goal of reducing or limiting the impact of managed care plans on its monopoly in acute inpatient services. In furtherance of these goals, the Hospital also used its control over admitting privileges to reduce competition in physician and outpatient services markets. The Hospital adopted a Medical Staff Development Plan in part to limit the size and mix of its medical staff. This Plan effectively controlled the entry of new physicians into Danbury and thereby insulated HealthCare Partners from competition. The Hospital also announced a policy that required its doctors to perform at least 30% of their procedures at the Hospital. This announcement caused a reduction in the use of a competing outpatient surgery center.

Based on the facts described above, the Complaint alleges (1) that the defendants entered into a contract, combination, or conspiracy that eliminated competition among physicians, reduced or limited the development of managed care plans, and reduced or limited competition among outpatient service providers, all in violation of Section 1 of the Sherman Act, 15 U.S.C. §1 and (2) that HDS took exclusionary acts that had the purpose and effect of maintaining Danbury Hospital's market power in acute inpatient hospital services and gaining an unfair advantage in markets for outpatient services, in violation of Section 2 of the Sherman Act, 15 U.S.C. §2.

## III

## Explanation of The Proposed Final Judgment

The proposed Final Judgment is intended to prevent the continuance or recurrence of defendants' agreement to eliminate competition among doctors and reduce or limit the development of managed care in the Danbury area. The proposed Final Judgment is also intended to prevent the continuance or recurrence of DHS's exclusionary conduct. The overarching goal of the proposed Final Judgment is to enjoin defendants from engaging in any activity that unreasonably restrains competition among physicians, outpatient service providers, or managed care plans in the Danbury area, or that willfully maintains Danbury Hospital's market power in acute

inpatient services, or gains Danbury hospital an unfair advantage in markets for outpatient services, while still permitting defendants to market a provider-controlled managed care plan.<sup>2</sup>

## A. Scope of the Proposed Final Judgment

Section III of the proposed Final Judgment provides that the Final Judgment shall apply to defendants and to all other persons who receive actual notice of this proposed Final Judgment by personal service or otherwise and then participate in active concert with any defendant. The proposed Final Judgment applies to DHS, DAIPA, and HealthCare Partners.

## **B.** Prohibitions and Obligations

Sections IV and V of the proposed Final Judgment contain the substantive provisions of the Judgment.

In Section IV(A), DAIPA and HealthCare Partners are enjoined from setting or expressing views on the prices or other competitive terms and conditions or negotiating entity is a Qualified Managed Care Plan ("QMCP"—as defined in the proposed Final Judgment and discussed below). However, DAIPA and HealthCare Partners are permitted to use a messenger model, as discussed below.

Section IV(B)(1) enjoins DHS, DAIPA, and HealthCare Partners from precluding or discouraging any physician from contracting with any payer, providing incentives for any physician to deal exclusively with DAIPA, HealthCare Partners, or any payer, or agreeing to any priority among themselves as to which will have the right to negotiate first with any payer. Nothing in Section IV(B), however, prohibits physicians from agreeing to exclusivity in connection with an ownership interest or membership in a QMCP.

Section IV(B)(2) prohibits the sharing of competitively sensitive information. DHA, DAIPA, and HealthCare Partners are enjoined from disclosing to any physician any financial or other competitively sensitive business information about any competing physician and from requiring any physician to disclose any financial or other competitively sensitive information about any payer. An exception permits any defendant to

<sup>&</sup>lt;sup>1</sup>While the doctors also authorized HealthCare Partners to enter into risk-bearing contracts, HealthCare Partners has not exercised this authority. Even if it had, or does in the future, the negotiation of risk-bearing contracts would not justify the unlawful negotiation of non-risk-bearing contracts that occurred here. See Statements of Enforcement Policy and Analytical Principles Relating to Health Care and Antitrust ("Health Care Policy Statements") that the U.S. Department of Justice and the Federal Trade Commission issued jointly on September 27, 1994, 4 Trade Reg. Rep. (CCH) ¶ 13,152, at 20,794 n.35.

<sup>&</sup>lt;sup>2</sup> This relief comports with the Health Care Policy Statements, and in particular with the principles enunciated therein that a provider network (1) should not prevent the formation of rival networks and (2) may not negotiate on behalf of providers, unless those providers share substantial financial risk or offer a new product to the market place. Statement 8, 4 Trade Reg. Rep. (CCH) ¶ 13,152, at 20,788–89; Statement 9, *id.* at 20,793–94, 20,796.