



THE CHAIRMAN

FEDERAL TRADE COMMISSION

WASHINGTON, D.C. 20580

November 18, 2009

The Honorable Herb Kohl  
Chairman  
Subcommittee on Antitrust, Competition Policy and Consumer Rights  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for your letter of November 3, 2009 regarding clinical integration in the health care industry. This is an extremely important topic, and I agree wholeheartedly that antitrust guidance is critical for those health care providers who wish to pursue clinical integration. As you know, the Federal Trade Commission has gone to great lengths in recent years to work with numerous stakeholders in the health care field to develop and explain our interpretation of the antitrust laws and how those laws apply to efforts to achieve clinical integration in various medical industries. Your letter is a timely reminder of the significance of this issue, and I have asked the Commission staff to take this opportunity to re-engage with those stakeholders to explore whether, and in what forms, additional guidance concerning clinical integration may be feasible and useful.

By way of background, the Commission has long recognized that clinical integration may create efficiencies, and thus seeks to avoid deterring beneficial collaborations among competitors that have the potential to improve efficiency and raise quality – while not sanctioning those arrangements that likely will harm consumers through unjustified and illegal price-fixing or group boycotts. This approach promotes flexibility and encourages innovation by market participants, as we have seen first-hand in the widely differing clinical integration programs that have come to our attention.

This balanced approach is reflected in the substantial guidance the agency has provided. For example, the joint FTC/DOJ *Statements of Antitrust Enforcement Policy in Health Care* provide a careful presentation and explanation of the general antitrust law principles that apply to such

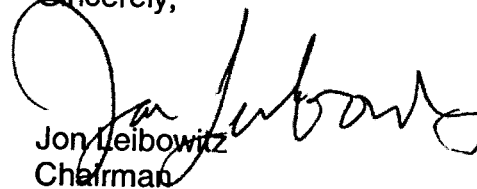
arrangements.<sup>1</sup> In addition, FTC staff has issued a series of detailed advisory opinion letters discussing the application of those principles to a variety of specific factual situations. These advisory opinions, as well as law enforcement cases the Commission has brought against anticompetitive collaborations in the health care area, provide insights as to how the Commission and the staff view different clinical integration arrangements.

Also, as I noted earlier, the Commission staff has for many years engaged in discussions regarding clinical integration with various stakeholders, including the American Medical Association, the American Hospital Association, and representatives of numerous groups contemplating clinical integration programs. Indeed, the Commission conducted a workshop on clinical integration last year, and an outside observer noted that the agency has provided more guidance on clinical integration than it has in all other areas combined.

Nevertheless, I certainly agree with you that additional guidance, where feasible and appropriate, is always valuable, and would be particularly valuable as the nation considers fundamental reform of the health care system. Accordingly, staff will begin immediately to re-engage interested parties to further discuss the issue, and I will keep you informed of any developments that may result from the Commission staff's interactions with health care industry stakeholders.

I very much appreciate your strong interest in this very important subject. And, of course, please feel free to contact me with any additional concerns, on this or any other topic.

Sincerely,



Jon Leibowitz  
Chairman

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<sup>1</sup> The joint FTC/DOJ *Statements* are available on the public Commission Website at <http://www.ftc.gov/bc/healthcare/industryguide/policy/index.htm>.