GREENEBAUM
DOLL & McDONALD
(A PARTNERSHIP INCLUDING PROFESSIONAL SERVICE CORPORATIONS)
3300 FIRST NATIONAL TOWER
LOUISVILLE, KENTUCKY 40202-3197
TELEPHONE 502/589-4200
FAX 502/587-3695

JOHN R. CUMMINS
Direct Dial: 502/587-3602

February 25, 1994

Assistant Attorney General
Antitrust Division
Department of Justice
10th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Re: Business Review Letter Request

Dear Assistant Attorney General:

Physician Care, Inc. ("PCI") respectfully requests the expedited response of the Antitrust Division, pursuant to the Business Review Procedure established in 28 C.F.R. §50.6 and the Pilot Business Review Program for joint ventures announced on December 1, 1992 with respect to the proposed conduct of PCI as described in the enclosed materials.

PCI is a physician independent practice association formed for the purpose of contracting on a risk basis with national, regional and local third-party payor managed health care plans and organizations for the delivery of high-quality, low cost physician services on a capitated or withhold basis, in an integrated system providing quality assurance, utilization and peer review, and physician and patient education. The enclosed materials are responsive to the information and document requirements set forth in the above-referenced regulation and Pilot Program. PCI hereby represents that it has undertaken a good faith search for the documents specified and is providing herewith all responsive material in its possession, except superseded drafts of the documents provided.

If you have any questions, we will be happy to respond. Should an adverse determination be contemplated for any reason, we request the opportunity to respond to the concerns of the agency before you issue your review.

Very truly yours,

John R. Cummins

JRC/vmg
Enclosures

**Physician Care, Inc.--**
**Department of Justice Business Review Request**

## 1. GENERAL INFORMATION:

The name of the venture is Physician Care, Inc. ("PCI"). The mailing address of PCI is P. O. Box 51785, Bowling Green, Kentucky 42102, and the temporary principal place of business is 1777 Ashley Circle, Bowling Green, Kentucky 42104. The legal form of PCI is a non-profit corporation without capital stock or stockholders. The corporation is incorporated in the Commonwealth of Kentucky. Since PCI is a non-profit corporation without stockholders, there is no ownership structure; physicians are the members of PCI instead.

## 2. PERSONS EXPECTED TO PARTICIPATE:

Exhibit A lists all of the current member physicians in PCI and their specialties. Of these, 29 physicians have been credentialed but are awaiting the results of this business review before signing PCI provider agreements. Exhibit B lists all of the physicians who practice in the service area, including those physicians who are members of PCI. The service area for PCI encompasses much, if not all, of South Central Kentucky. This is widely recognized as the Barren River Area Development District ("BRADD"), which includes a ten-county area in South Central Kentucky. Exhibit C breaks down the physicians in this area and in PCI by specialty.

The participants of PCI (members) are providing several services for the organization. Most of the committee work is being performed by PCI members. These committees are established to provide functions like development of Practice Parameters, monitoring physician utilization, monitoring physician quality, educating all the participants (physicians, employers, patients), and credentialing the physicians. The physicians also contribute initiation fees of $500 each, periodic assessments, and will direct a small percentage (not exceeding 2%) of their revenues from PCI medical service contracts to PCI to cover operational costs of the organization.

## 3. PURPOSE AND OBJECTIVES OF PCI:

The main purpose of PCI is to provide physicians the opportunity to work together in a cooperative environment in the delivery of managed, efficient medical care in the South Central Kentucky area. This is evidenced by the mission statement of PCI; the organization was developed to give physicians a clear opportunity to provide quality cost effective medical care in South Central Kentucky. The goals and objectives developed by the corporation fall in line with this mission statement (see Exhibit D).

In furtherance of that purpose, PCI works with insurance companies in developing systems and contracting with them to provide such medical care. While there are no such contracts yet, it is anticipated that PCI will contract to provide managed medical care services to HMOs, insurance companies, self-insured business and other groups. The contracts are contemplated to provide for discounted fee-for-service, usually with a withhold, or capitation reimbursement. The contracts would have efficient medical care as a goal, with the physicians at economic risk for achieving projected cost-savings. Equally important, PCI will offer and contract to provide a full array of support services to the health care plan. PCI will offer each plan physician credentialing, quality assurance, utilization review, peer review, physician education and patient education. Exhibit E details better how PCI plans to manage patient care.

## 4. SERVICES OF PCI:

PCI will provide physician and related services the managed care health plans and program. PCI member physicians selected for each particular health plan or contract will provide physician services within their practice area and within each health plan's protocols and parameters. PCI will offer a broad panel of physicians practicing the full range of medical services to health plan sponsors desiring to operate in PCI's service area. This offers both health plan sponsors and area physicians tremendous efficiencies. By having such a fully-credentialed panel of physicians in place, PCI provides ease of entry for new health plan sponsors. Also, PCI offers a competitive alternative to the only existing physician care organization in the area, Center Care, described elsewhere. Center Care is a PPO of 175 physicians sponsored by a local hospital and has 35,000 covered lives in a total market population of 222,766 according to the BRADD Data Book for 1994. PCI is a smaller, newer market entry without hospital affiliation which should give plan sponsors a second, alternative physician panel to use in PCI's service area. Such competition should lead to greater competition on price and terms of managed care services in the PCI service area.

PCI will also provide an array of support services to health care plans designed to improve their operating and cost efficiency. These include physician credentialing, quality assurance, utilization review, peer review, physician and patient education, and the development of Practice Parameters. Practice Parameters, as developed by PCI, are general guidelines of care that are provided to physicians for certain medical conditions. These guidelines have been developed by member physicians in a task force environment where they look at a particular medical condition, develop ways to diagnose the condition, and define the appropriate treatment modalities.

These Practice Parameters are designed to perform several functions. The first function is to, as stated above, provide guidance to physicians in the efficient practice of medical care for a particular medical condition. They are also used as an educational tool to physicians. If it has been determined the utilization of a physician falls outside the parameters developed, then the parameters would be used by a utilization review committee as an educational tool. This is done in a manner to let physicians become more aware of what is needed to efficiently practice medicine.

Another service that is being developed by PCI is essential coordination of utilization review with insurers.

Many insurers, especially the managed care concerns, have their own utilization review systems in place. However, there appear to be some inefficiencies in this type of arrangement because each individual insurer has its own process. As each insurer develops its utilization review, physicians offices must be aware of the rules and regulations with each utilization review process. This example demonstrates the time consuming high cost of administration of medical care in the United States. PCI's approach is to coordinate those efforts and to centralize programs that would be monitored by our local physicians, and that would have standardized sets of utilization review guidelines. The approach PCI takes with utilization review is just another example of how it is trying to keep the administrative costs of health care down, which is a substantial burden on the system.

Another service that PCI provides is to educate a wide variety of relevant populations. These populations include physicians, employers, insurance companies and other health plan sponsors, physician office staff and nurses, hospital nursing personnel, and the patients. The idea of this education is to demonstrate to all of the populations that costs can be controlled with appropriate behavior, not only of the patient as far as his or her lifestyle, but also of the providers as for his or her manner of delivering medical care.

There need to be incentives for all participants in the delivery of health care--the providers, the payors, and the patients. The best incentive is monetary. Thus, it is envisioned that by working together in the proposed coordinated activity, all members would receive some type of reward for holding down health care costs. One such way would be for the three populations to share in profits (money not spent). For the patients, the incentive is to keep costs down by keeping premiums down. The best way for patients is through continual education and appropriate lifestyle management. In addition, by controlling the use of health care resources, there will be fewer chances of increasing deductibles and co-payments. For the employer, as the ultimate payor, there is decreased cost through keeping premiums down. For the provider, there is incentive to not use health care resources by providing a year-end distribution of withholds, or of excess capitation amounts, for controlling costs.

In addition, PCI is developing programs where it can provide services, such as a purchasing pool, that will hopefully in the long run decrease the overhead costs in a member physician's office. Such items that can be

considered for a purchasing pool are office supplies, group health insurance and centralized billing.

PCI will contract with member physicians to provide managed medical services. PCI's proposed Master Medical Service Agreement is enclosed as Exhibit J. PCI's relationship with its physicians is mutually non-exclusive. Thus, the physicians may practice independently with non-managed care patients, and may also contract (directly or through other physician organizations) to provide managed medical care.

Physicians must make financial contributions to PCI. There are initial and ongoing assessments against members, and members commit to a percentage (generally not exceeding 2%) of their revenues from PCI patients to cover PCI operating costs. PCI also achieves financial integration by the physicians submitting to the discounted fee-for-service (usually with withholds) and capitation forms of reimbursement, placing the physicians at substantial economic risk.

## 5. SERVICES CURRENTLY PROVIDED BY PARTICIPANTS:

Services currently provided by participants similar to those provided by PCI are relatively minimal, since managed health care is a recent development in South Central Kentucky. The primary exception is the Center Care PPO, in which 88 of the PCI physicians now participate. (Excluding the physicians who have been credentialed but have not signed provider agreements pending the outcome of this review, only 60 PCI physicians are in the Center Care PPO.) PCI's services will be different since PCI is not sponsored by, or allied to, any particular hospital. Further, PCI believes that its entry into the physician managed care arena will foster competition and enhance managed care physician services. Several other companies have small managed health care programs in the PCI market area. PCI physicians may participate in these smaller programs as well.

Another service that is provided by participating physicians is utilization review. However, this utilization review is typically just done on an inpatient basis at the hospitals for patients who have been seen in hospitals. This utilization review does not encompass outpatient procedures, physician office visits, and other ancillary products such as therapy or the purchase of durable equipment and pharmaceutical products. The utilization review program being developed by PCI will encompass the entire array of medical care, not only inpatient, but outpatient hospital, physician office, therapy and various other modalities of health care. This will better enable the physicians to track patient care and to provide a better quality service while a the same time decreasing the costs because utilization review will be done not only on an inpatient basis but throughout all of services in health care.

6. COMPETITORS:

The competitors of PCI are essentially two-fold. First, all physicians in the PCI 10-county service area are potentially capable of contracting to provide managed care. As the attached Exhibit B illustrates, there are 276 physicians in the service area. PCI's penetration within this universe of physicians, broken down by specialty of practice, is enclosed as Exhibit A. Overall, PCI has 37.32% of the total area physicians among its members, but on a non-exclusive basis. Further, this number includes 29 physicians who are members of a multi-specialty clinic who have become credentialed as members of PCI, but have not agreed to join PCI until a favorable determination from the Department on this business review letter has been received.

The second primary source of competition for PCI is Center Care, a PPO sponsored by a local area hospital. According to the latest information on Center Care available to PCI, copies of which are set forth as Exhibits M through P, Center Care has 173 member physicians. This represents more than 62% of the local area physicians. They are 70% larger than PCI, even assuming PCI includes all 103 current member physicians. Center Care has been in existence for some time, and has managed to contract for an estimated 35,000 covered lives at this time. A summary of its contracts and covered lives is attached as Exhibit O. Because of its greater size, its affiliation with a large area hospital, and its greater number of physicians and covered lives, it is anticipated that Center Care will be larger than PCI in the foreseeable future. PCI does not contemplate adding physicians in any meaningful numbers in the foreseeable future. It does obviously intend to contract to provide managed care coverage to health plans, with information concerning its projected growth as set forth in Section 9 below.

There are several other networks and HMOs established in the South Central Kentucky area. These include HMO of Kentucky, Option 2000 (Blue Cross/Blue Shield), Humana Health Care Plans, and HealthWise of Kentucky, Ltd. The extent of their covered lives is not known, but none is believed to have a substantial number of covered lives. One has contracted with a local hospital-based IPA, South Central Kentucky IPA, to provide medical services.

7. **PARTICIPANT RESTRICTIONS:**

Regarding the participant physicians and the restrictions placed on them by PCI, the restrictions are minimal at most; they are set forth in the Articles of Incorporation, Bylaws, and Medical Services Agreement attached. All participating physicians are able at any time to go outside of PCI in signing a contract with an insurer or with another physician organization. This is evidenced in the PCI-Physician Medical Service Agreement paragraph 4.3 which states, "This agreement is non exclusive as to both parties, and either may contract with one or more other parties with a provision of medical services as each shall determine in such parties' sole discretion."

This is further evidenced by the recent experience that PCI had with an HMO which attempted to contract with PCI, through a local hospital IPA, South Central Kentucky IPA ("SCKIPA"). When contract negotiations between PCI with the IPA broke down, PCI leadership informed our members that we had come to an impasse on contract negotiations. We also informed our members that it was up to them if they individually wanted to contract with the IPA; they were welcome to sign such an arrangement. This is further proven by the fact that some PCI members in fact have signed on with the IPA after negotiations failed. It is the intent of PCI to continue this non-exclusive arrangement with physicians for services.

## 8. INFORMATION TO PARTICIPANTS:

Information will be provided to participants in the line of information dissemination and education. We already provide our participants with our Articles of Incorporation, Bylaws, and newsletters. We also provide participants with a set of Practice Parameters that they can use in their offices to assist them in providing cost effective medical care. These Practice Parameters, as has been stated previously, are designed to be utilized by the members as an educational tool and an informational tool and a guideline for them. Utilization review, peer review, quality assurance, and other operating rules and criteria will be disseminated to all members. A physician's personal data will also be distributed to that physician, particularly where the data indicates that changes are needed.

The staff of PCI has the task of negotiating contracts with insurance companies on a strictly confidential basis. Typically, the plan sponsor will provide PCI with a proposed payment program, and PCI's Executive Director then reports on any aspects which are not commercially reasonable. For instance, in the recent negotiation with SCKIPA described in Section 7 above, the negotiations were conducted by the Executive Director (the non-physician staff leader) and outside legal counsel. PCI will not give out specific information on contract negotiations until a contract has been finalized and submitted for approval by the board of directors of PCI. At that point, the board and then member physicians are provided the opportunity to accept or reject each and every contract that PCI staff has negotiated. It is the Executive Director that is responsible for doing the actual negotiations of contracts. The Executive Director is also the one who provides comments and suggestions on any fee schedule offered by health plan sponsors, and who develops any internal fee schedule needed within any capitation plan. No other physician sees any other physician's fee schedule, no health plan sponsor sees any physician's fee schedule, and physicians do not have input into fee negotiations.

## 9. TEN LARGEST CUSTOMERS:

PCI has no current customers. PCI projects that its largest customers will be as follows, once PCI becomes operational.

PROJECTED CUSTOMER

1. Blue Cross/Blue Shield of KY
2. Aetna
3. Travelers
4. Prudential
5. Provident
6. Metropolitan
7. Bankers Life
8. CNA
9. Business Men's Assurance
10. Connecticut General

## 10. MARKET ENTRY REQUIREMENTS AND FUTURE ENTRANTS:

There are no statutory or licensing requirements for physician managed care organizations to form in Kentucky. The only requirement for entry into this form of venture is the ability to attract a sufficient spectrum of area physicians in order to provide health plan sponsors with desired physician coverage. Further, physician managed care services can be obtained by plan sponsors by direct contracts with individual physicians. It is not now known whether there are other physician managed care organizations being formed in the area, although it is anticipated at least one local hospital, the sponsor of the South Central Kentucky IPA, may attempt to form its own physician organization. Other local hospitals may follow suit, as well as one or more of the HMOs and other sponsors providing services in the South Central, Kentucky area.

## 11. POTENTIAL SYNERGIES:

**CONTRACTING:** PCI would enable managed care health plan sponsors to access a comprehensive network of credentialed physicians very readily. Similarly, PCI will enable its member physicians to contract with a greater number of managed care health plan sponsors.

**PRACTICE PARAMETERS:** By bringing physicians together, PCI will be able to develop practice parameters to standardize and reduce the cost of delivering certain medical services. These are developed to provide a mechanism to educate physicians on efficient ways to practice medicine for certain identifiable medical conditions. These parameters are at the core of patient quality management and utilization review.

**REDUCED ADMINISTRATIVE COSTS:** Since the offices of PCI would work directly with the physicians and their offices, the coordination of activities should decrease overhead costs. This can be accomplished by developing a standardized patient management system rather than relying on each insurer's system, which complicates matters and increases administrative costs.

**REDUCED OVERHEAD:** PCI is developing ways to decrease costs to member offices by providing such programs as purchasing pools for office supplies, providing health insurance coverage for offices in an association approach and possible centralized billing.

**PATIENT MANAGEMENT:** PCI is developing a centralized system of patient care where the independent offices communicate with other offices and the PCI office on procedures and tests performed. The idea for this approach is to decrease duplication of services and tests. It is envisioned that the system would first be developed with fax machines and ultimately turn to interactive data processing.