

STATE OF NORTH CAROLINA
COUNTY OF FORSYTH

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
13-CVS-2595

SUSAN SYKES d/b/a ADVANCED
CHIROPRACTIC AND HEALTH CENTER,
DAWN PATRICK, TROY LYNN,
LIFEWORCS ON LAKE NORMAN, PLLC,
BRENT BOST, and BOST CHIROPRACTIC
CLINIC, P.A.

Plaintiffs,

AMENDED
CLASS ACTION COMPLAINT
Jury Trial Demanded

v.

HEALTH NETWORK SOLUTIONS, INC.
F/K/A CHIROPRACTIC NETWORK OF THE
CAROLINAS, INC., MICHAEL BINDER,
STEVEN BINDER, ROBERT STROUD, JR.,
LARRY GROSMAN, MATTHEW SCHMID,
RALPH RANSONE, JEFFREY K.
BALDWIN, IRA RUBIN, RICHARD
ARMSTRONG, BRAD BATCHELOR, JOHN
SMITH, RICK JACKSON, and MARK
HOOPER,

Defendants.

NOW COME Plaintiffs Dr. Susan Sykes, D.C. doing business as Advanced Chiropractic and Health Center, Dr. Dawn Patrick, D.C., Dr. Troy Lynn, D.C., Lifeworks on Lake Norman, PLLC, and Dr. Brent Bost, D.C. (the "Plaintiffs"), proceeding by and through undersigned counsel, for their Class Action Complaint against corporate Defendant Health Network Solutions, Inc. ("HNS") and individual Defendants Michael S. Binder, Steven Binder, Robert Stroud, Jr., Larry Grosman, Matthew Schmid, Ralph Ransone, Jeffrey K. Baldwin, Ira Rubin, Richard Armstrong, Brad Batchelor, John Smith, Rick Jackson, and Mark Hooper, ("Individual Defendants") and say as follows:

PARTIES

1. Plaintiff Dr. Susan Sykes is a chiropractor licensed to practice and practicing chiropractic in the state of North Carolina and practicing chiropractic in Forsyth County, North Carolina doing business as Advanced Chiropractic and Health Center.
2. Plaintiff Dr. Dawn Patrick is a chiropractor licensed to practice and practicing chiropractic in the state of North Carolina who has practiced chiropractic in Iredell County, North Carolina for Plaintiff Lifeworks on Lake Norman PLLC, a North Carolina Professional Limited Liability Company in which she is a part owner.
3. Plaintiff Dr. Troy Lynn is a chiropractor licensed to practice and practicing chiropractic in the state of North Carolina and practicing chiropractic in Iredell County, North Carolina for Plaintiff Lifeworks on Lake Norman PLLC, a North Carolina Professional Limited Liability Company in which he is a part owner.
4. Plaintiff Dr. Brent Bost is a chiropractor licensed to practice and practicing chiropractic in the state of North Carolina and practicing chiropractic in Rowan County, North Carolina for Plaintiff Bost Chiropractic Clinic, P.A., a North Carolina Professional Association of which Dr. Bost is the owner..
5. Defendant HNS is a business corporation organized under Chapter 55 of the North Carolina General Statutes and having its principal place of business at 20476-A Chartwell Center Drive, Cornelius, NC 28031. Upon information and belief, HNS may be served at its registered agent Steven S. Binder, 414 E. Front Street, Statesville, NC 28677.

6. HNS operates, maintains, manages, markets, and advertises a network of chiropractors hereinafter referred to as “HNS’s Network” or “the HNS Network”.
7. HNS provides chiropractic services to healthcare plans associated with Blue Cross and Blue Shield of North Carolina, Cigna and other healthcare plans, and has done so for some or all of these entities for over a decade.
8. HNS is paid for these chiropractic services through a single tax identification number.
9. Defendant Dr. Michael Binder is an individual and a resident of North Carolina residing in Iredell County.
10. Defendant Dr. Steven Binder is an individual and a resident of North Carolina residing in Rowan County.
11. Defendant Dr. Robert Stroud is an individual and a resident of North Carolina residing in Guilford County.
12. Defendant Dr. Larry Grossman is an individual and a resident of North Carolina residing in Guilford County.
13. Defendant Dr. Matthew Schmid is an individual and a resident of North Carolina residing in Wake County.
14. Defendant Dr. Ralph Ransone is an individual and a resident of North Carolina residing in Wake County.
15. Defendant Dr. Jeffery K. Baldwin is an individual and a resident of North Carolina residing in Ashe County.
16. Defendant Dr. Ira Rubin is an individual and a resident of North Carolina residing in Wake County.

17. Defendant Dr. Richard Armstrong is an individual and a resident of North Carolina residing in Wake County.
18. Defendant Dr. Steven Doyle is an individual and a resident of Florida.
19. Defendant Dr. Brad Batchelor is an individual and a resident of North Carolina residing in Watauga County.
20. Defendant Dr. John Smith is an individual and a resident of North Carolina residing in Wake County.
21. Defendant Dr. Rick Jackson is an individual and a resident of North Carolina residing in Davidson County.
22. Defendant Dr. Mark Hopper is an individual and a resident of North Carolina residing in Wilson County.
23. Each of the Individual Defendants are, or were at relevant times, practicing chiropractors in the State of North Carolina. Upon information and belief, the Individual Defendants own an interest in HNS, or did so at relevant times, and have received significant compensation or other financial payments from HNS in various forms. The Individual Defendants are members of the HNS Network but are only a very few of those members. Collectively and individually, the Individual Defendants are referred to herein as “HNS’s Owners” along with any other owners of HNS whose identities have not yet been determined.
24. The HNS’s Owners have used HNS as a vehicle to provide chiropractic services to Blue Cross and Blue Shield of North Carolina, Cigna and other healthcare plans under exclusive contracts covering all 100 counties of North Carolina.

25. These exclusive contracts have been a source of significant and consistent revenue to the HNS's Owners as well as HNS for over a decade.

JURISDICTION AND VENUE

26. This Court has subject matter jurisdiction over the claims asserted herein under N.C. Gen. Stat. § 7A-240.
27. Defendants are subject to the jurisdiction of this Court under N.C. Gen. Stat. § 1-75.4 as they are either a domestic corporation or a natural person domiciled within this state, are engaged in substantial activity within North Carolina, and the claimed injuries arise out of their actions that occurred and are occurring within North Carolina.

INDIVIDUAL ALLEGATIONS

A. Dr. Susan Sykes

28. Dr. Sykes doing business as Advanced Chiropractic and Health Center has practiced chiropractic in Forsyth County for over 20 years. She was a member of HNS's Network for over a decade providing chiropractic treatment to patients covered by health policies and plans of Blue Cross Blue Shield of North Carolina and Cigna.
29. Dr. Sykes was terminated from HNS's Network effective May 20, 2012. The sole basis for this termination was application of HNS's "Utilization Review Process" (described more fully below) based upon her average per patient treatment cost.
30. Dr. Sykes has received payment from HNS under the name Advanced Chiropractic and Health Center..

B. Dr. Dawn Patrick

31. Dr. Patrick has practiced chiropractic since 2002 and has practiced in Iredell County for approximately five years. She was a member of HNS's Network for approximately five years providing chiropractic treatment to patients covered by health policies and plans of Blue Cross Blue Shield of North Carolina and Cigna as well as other healthcare plans.
32. Dr. Patrick is a veteran of the U.S. Navy, serving in the Middle East during Operation Desert Storm and was active as a reserve for over 5 years.
33. Dr. Patrick resigned from the HNS network effective March 2012 under threat of termination by HNS. The sole basis for this threat of termination was application of HNS's Utilization Review Process based upon her average per patient treatment cost. Dr. Patrick's resignation was a constructive termination because of the likely negative consequences of HNS reporting such a termination nationally and otherwise.
34. At the time of her threatened termination, Dr. Patrick was in a joint chiropractic practice with her husband practicing under the name Lifeworks on Lake Norman, PLLC. Dr. Patrick has received payment from HNS under that name.
35. When Dr. Patrick resigned from the HNS network, HNS threatened to terminate her husband's participation in the HNS network unless he ceased practicing under the same tax identification number with Dr. Patrick. The sole basis for the threat of her husband's imminent termination was Dr. Patrick's resignation from the HNS network.

36. For a time, Dr. Patrick ceased practicing chiropractic altogether under the threat of termination of her husband from HNS's Network. Dr. Patrick and her husband changed their business relationships and operations so that they no longer practice chiropractic under the same tax identification number to avoid his termination from the HNS Network.

C. Dr. Troy Lynn

37. Dr. Lynn has practiced chiropractic in Iredell County for about five years under the name Lifeworks on Lake Norman, PLLC. Dr. Lynn has received payment from HNS under that name.

38. He has been a member of HNS's Network during this time providing chiropractic treatment to patients covered by health policies and plans of Blue Cross Blue Shield of North Carolina and Cigna as well as other healthcare plans.

39. HNS threatened to terminate Dr. Lynn in March of 2013. He appealed his termination on March 22, 2013 and presented evidence of his variations in patient demographics. HNS claimed that Dr. Lynn did not provide any substantive reason for it to reconsider Dr. Lynn's termination, allowed Dr. Lynn to remain in the network and threatened that if Dr. Lynn fails to keep his average cost per patient below the network average he would be immediately terminated with no opportunity for appeal.

40. Subsequently, Dr. Lynn received a report from HNS stating his March 2013 average cost per patient, along with yet another threat to terminate him from the network based upon this average.

D. Dr. Brent Bost

41. Dr. Bost has practiced chiropractic in Rowan County for about 31 years. He is not and has never been a member of HNS's Network.
42. Dr. Bost has practiced chiropractic under the name of Bost Chiropractic Clinic P.A.
43. Dr. Bost has provided chiropractic treatment to patients covered by health policies and plans of Blue Cross Blue Shield of North Carolina and Cigna, but does so “out of network.”
44. Dr. Bost was initially denied entry into HNS’s network. He directly competed with Defendant Michael Binder in Rowan County at the time.
45. Subsequently, after the initial damage to Dr. Bost’s practice was done, he was offered membership into HNS’s network but declined due to HNS’s practices.
46. The practices of HNS and the initial denial of admission to HNS’s Network have damaged Dr. Bost’s practice and continue to do so.
47. In order to participate in HNS’s Network, all of the Plaintiffs were required to pay HNS a percentage of the fees rendered for their covered services under healthcare plans for which HNS provided chiropractic services.
48. Dr. Lynn is still required to pay HNS a percentage, which is currently nine and one half percent.
49. A percentage based fee has been collected by HNS from Plaintiffs, other than Plaintiffs Bost and Bost Chiropractic Clinic, P.A., and other chiropractors in North Carolina even if no reimbursement was due for a service from a healthcare plan for which HNS provided chiropractic services.

50. Chiropractors in North Carolina participating in the HNS Network have been and generally are subjected to the HNS Utilization Review Process and receive warnings, adverse actions including termination, and/or incentives based upon average per patient cost as determined by HNS under its Utilization Review Process.

CLASS ACTION ALLEGATIONS

51. Plaintiffs bring this action as a class action under Rule 23 of the North Carolina Rules of Civil Procedure. The class (the “Class” including subclasses) consists of:

licensed chiropractors practicing in North Carolina from 2003 to the present including chiropractors:

- (a) who currently are, or formerly were, members of the HNS Network, or
- (b) who provided services to chiropractic patients insured by insurers who contracted with HNS to provide in-network chiropractic services, or
- (c) who practice or practiced chiropractic in the State of North Carolina.

Excluded from the Class are the Individual Defendants and any chiropractors in their employ or practicing through a professional corporation, a professional partnership or a professional limited liability company in which any of the Individual Defendants are owners. The members of the Class are hereinafter also referred to as “Providers.” The Class satisfies the requirements of Rule 23 for the reasons set forth below.

52. Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making final relief appropriate with respect to the Class as a whole.

53. The members of the Class are so numerous that joinder of all Class Members is impracticable within the meaning of Rule 23. The members of the Class are geographically dispersed throughout the state of North Carolina, and joinder of all Class Members would be impracticable. Although the exact number of the members of the Class is presently unknown, there are more than a thousand members. The names and addresses of most members of the Class can be ascertained through discovery and by reference to the online database of the North Carolina Board of Chiropractic Examiners.
54. Plaintiffs' claims are typical of the claims of the other members of the Class. Plaintiffs and all other members of the Class are licensed chiropractors in North Carolina who are or were required to join HNS's Network and pay percentage fees, submit to inappropriate restrictions and regulations, and accept prices for reimbursement for services rendered, including co-pays, that were fixed by, or agreed to by, HNS in conjunction with others, in order to be an "in network" Provider for Blue Cross Blue Shield of North Carolina and Cigna, as well as other healthcare plans.
55. Plaintiffs and the other members of the Class have sustained damages arising out of the conduct of the Defendants in violation of state law as complained herein.
56. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class action, contract, business tort, and antitrust litigation.
57. This action is properly maintained as a class action in that questions of law and fact common to the claims of Plaintiffs and the members of the Class predominate

over questions of law or fact affecting only individual members of the Class, such that a class action is superior to other available methods for the fair and efficient adjudication of this controversy. All of these issues arise from the conduct of HNS and the Individual Defendants, as complained of herein.

58. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. The prosecution of separate actions by individual members of the Class against Defendants would impose heavy burdens on the courts of this state and the members of the Class. It would also create the risk of inconsistent or conflicting rulings on questions of law and fact common to the Class. A class action, in contrast, would achieve substantial economies of time, effort and expense, and would assure uniformity of decision as to persons similarly situated without sacrificing procedural fairness or bringing about other undesirable results.
59. The interests of members of the Class in individually controlling the prosecution of separate actions is theoretical rather than practical. The Class has a high degree of cohesion, and prosecution of the action through representatives would be unobjectionable. The amounts at stake for many individuals, while substantial, are not great enough to enable them to maintain separate suits against the Defendants, especially under threat of termination from the HNS Network or other adverse action against chiropractors maintaining individual suits against Defendants. Plaintiffs anticipate no difficulty in the management of this action as a class action in that the Superior Courts of North Carolina are experienced in the resolution and management of numerous class actions with numerous judges able

to provide the oversight necessary to fulfill the goals and intent of Rule 23 of the North Carolina Rules of Civil Procedure.

FACTS

A. HNS's relationship to Class Members and Class Members' Patients

60. HNS is the exclusive provider of in-network Chiropractic services in North Carolina for Blue Cross Blue Shield of North Carolina ("BCBSNC") and Cigna Healthcare ("CIGNA") and other healthcare plans contracting with HNS (collectively the "Insurers").
61. Any chiropractor practicing in North Carolina who wishes to provide "in-network" care to North Carolina residents insured under a plan offered by the Insurers must join the HNS Network.
62. Being an out-of-network Provider imposes additional costs and inconvenience on Providers and covered patients. For example, an out-of-network Provider cannot submit a claim directly to BCBSNC for payment. Instead, the patient must either pay the Provider first and then submit a claim to BCBSNC for reimbursement, or the Provider must provide the patient credit and rely on the patient to provide payment after the patient receives reimbursement from BCBSNC. In addition, patients are subjected to higher deductibles and other adverse consequences when they choose to use an out-of-network Provider. Some patients are not reimbursed if they use an out-of-network Provider.
63. The demand for Chiropractic services is highly elastic. Insured patients are much more likely to see an in-network Provider than an out-of-network Provider due to, among other things, easier access by use of the list of in-network Providers

published by the insurers and perceived lower costs associated with seeing an in-network Provider.

64. HNS claims it is an integrated independent practice association that provides the members of its Network “services such as network development, credentialing, central claims administration, quality and utilization management, free continuing education and provider representatives.”
65. HNS claims to negotiate for the benefit of Providers with the Insurers for “increase(s) in the . . . fee schedule”, and “elimina[tion of] fee[s].”
66. HNS includes in its list of alleged benefits to Providers the Utilization Review Process as described below.
67. HNS claims to provide chiropractic services for all covered services under healthcare plans of Blue Cross and Blue Shield of North Carolina. In other words, HNS has contracted to furnish chiropractic services to patients insured by the Insurers as well as patients of healthcare plans offered or administered by the Insurers so long as the services are covered under those healthcare plans.
68. To be in the HNS Network, Providers must agree to pay HNS a percentage of the fees for services provided to covered insureds and to process all claims for reimbursement through HNS instead of submitting them directly to the Insurers. The Insurers accept direct claims submissions from other healthcare providers and have the administrative capability to do so for chiropractic submissions.
69. The percentage used for this fee charged by HNS has varied, but at relevant times has been 9.5% and 13%. More recently, HNS has offered discounts on this fee for those whose average cost per patient is lower for prescribed periods of time.

HNS's cost of transmitting a lower cost claim does not materially differ from the cost to transmit a higher priced claim.

70. The claims processing services purportedly provided by HNS are illusory and of essentially no benefit to the Providers. The process used by Providers to submit and receive payment for claims to HNS can be used to submit and receive payment for claims to Insurers directly. On the other hand, the requirement that claims for reimbursement be processed through HNS provides HNS the means to collect its fees, and gather the information necessary to fix prices, implement its Utilization Review Process, and police the Providers.
71. HNS's purported negotiations with the Insurers of reimbursement rates, covered services and co-pays, which are claimed by HNS to have been of benefit to the Providers, have been tainted by conflicts of interest and failures to advance the interests of the Providers and their patients, as opposed to the interests of the Insurers.
72. The described purported services and HNS's other purported services to the Providers do not justify the percentage fees and other consideration extracted from the Providers by HNS for participation in the HNS Network.
73. HNS has failed to provide the integrated IPA network, as described more fully below, which it promised to the Providers, operated free of conflicts of interests for the benefit of the Providers and their patients as a whole. HNS has also failed to add efficiencies, share risks among its Providers or increase competition. To the contrary, the HNS Network has resulted in inefficiencies and duplication and

has isolated and increased the risks to individual Providers and is anti-competitive.

B. HNS's Relationship with the Insurers

74. During the relevant period, HNS contracted with BCBSNC to be BCBSNC's exclusive provider of in-network Chiropractic services in North Carolina.
75. During the relevant period, HNS contracted with Cigna to be Cigna's exclusive provider of in-network Chiropractic services in North Carolina.
76. During the relevant period, HNS contracted with other healthcare plan providers for HNS to be the exclusive provider of in-network Chiropractic services in North Carolina to patients in those healthcare plans.
77. HNS is organized and operating for the purpose of contracting to furnish chiropractic services that are professional services by providers listed in N.C. Gen. Stat. § 58-50-30 and by professionals duly licensed under Chapter 90 of the General Statutes.
78. HNS is offering and providing a medical service plan and is a medical service corporation as those terms are defined in N.C. Gen. Stat. § 58-65-1.
79. HNS has exclusive contracts with the Insurers to furnish Chiropractic services, the terms of which HNS refuses to disclose.
80. BCBSNC has claimed that HNS is an intermediary and has been delegated only credentialing functions.
81. HNS receives payment under a single tax identification number ("TIN") from the Insurers for all of the chiropractic services of the Providers in its network which are reimbursable by the Insurers.

C. HNS's Claims of Integration.

82. HNS claims it is an integrated independent practice association ("IPA").
83. An IPA is a "non-exclusive joint venture" as defined by the Federal Trade Commission's guidelines on physician network joint ventures ("FTC Guidelines").
84. HNS's Network does not share financial risk with its program participants as defined by the FTC Guidelines for IPA safe harbor compliance with applicable antitrust laws.
85. HNS's Network operates without clinical integration between chiropractors as defined by the FTC Guidelines for IPA safe harbor compliance with applicable antitrust laws.
86. HNS is not an integrated IPA but instead is operating an involuntary cartel to control competition, supply, and pricing of chiropractic services in North Carolina made possible by the exclusive contracts with the Insurers and the market power provided by those contracts.
87. HNS misrepresents itself as an integrated IPA. HNS also falsely holds itself out as an integrated, risk sharing enterprise among its network members.
88. The Providers and the covered insured patients do not benefit from HNS's structure. Instead, insured patients are denied the full covered benefits from in-network Providers promised to them by the Insurers. The Providers are denied the agreed upon compensation for providing these covered services. The Providers are also denied the benefits of free competition and a free market in which to offer their services to covered insured patients.

89. As discussed below, the Utilization Review Process, disguised as quality management, and other activities by HNS serve to impair the availability of patient care and deprive the Providers of fair access to covered insured patients.
 90. HNS actively encourages its Providers to categorize covered services as uninsured “maintenance” in order to hold down the Providers’ average per patient costs depriving covered patients of access to covered services as described in their particular healthcare plans.
 91. HNS’s Utilization Review Process is implemented without reference to the terms of any particular healthcare plan, and the number of visits and scope of services which the covered patients were promised in those plans.
 92. The chiropractic benefits offered under the plans provided to covered patients by the Insurers or administered by the Insurers vary from plan to plan.
- D. HNS’s Business Structure
93. HNS was originally formed as a business corporation in 1996 under the name Chiropractic Network of the Carolinas Inc. (“CNC”) pursuant to Chapter 55 of the North Carolina General Statutes.
 94. HNS is organized for the purpose of maintaining and operating a medical service plan whereby chiropractic services are provided by chiropractors participating in the plan to patients covered by healthcare plans who subscribe to HNS’s Network as the means for providing "in network" chiropractic services.
 95. Upon information and belief, HNS is owned by chiropractors and contracts to provide chiropractic services. However, HNS did not organize itself as a professional corporation or other entity described in N.C. Gen. Stat. § 55B-5. As

a result, HNS avoided direct regulation by the North Carolina Board of Chiropractic Examiners, pursuant to N.C. Gen. Stat. § 55B-10.

96. HNS, as described above, maintains and operates a medical service plan and is a medical services corporation as Chapter 58 of the North Carolina General Statutes defines those terms.
97. HNS has not obtained the license required by N.C. Gen. Stat. § 58-65-50 to operate a medical service corporation and to offer a medical service plan.
98. HNS has not otherwise complied with the provisions of Chapter 58 applicable to medical service corporations and to those offering medical service plans.

E. Utilization Review Process

99. HNS implements its Utilization Review Process under the guise of a Quality Assurance Program. However, the Utilization Review Process is used to terminate or threaten to terminate Providers without regard to the actual quality of patient care. Instead, the program focuses primarily on the quantity and cost of services provided with average cost per patient being the currently employed metric used by HNS in implementing its Utilization Review Process and with average patient visits being a previously employed metric used to accomplish the same purpose.
100. The Utilization Review Process focuses on average cost per patient and does not include review of treatment protocols, patient files, or other aspects of actual patient care relating to the quality or medical necessity of services provided.
101. To the extent that HNS has reviewed patient files and either specific or representative cases, it typically has done so in conjunction with counseling

Providers about how to reduce average per patient costs by converting the patient to cash, by categorizing covered services as uninsured “maintenance”, and by otherwise limiting covered care provided to patients.

102. HNS specifically declines to consider medical necessity in its Utilization Review Process.
103. In reports to the Department of Insurance, the Insurers label HNS as an intermediary that is delegated solely the responsibility for credentialing the Providers for the Insurers.
104. The Insurers have not delegated utilization review to HNS.
105. HNS is not licensed as a Utilization Review Organization.
106. HNS does not follow the procedures for utilization review mandated by N.C. Gen. Stat. § 58-50-61.
107. HNS does not have a medical doctor that oversees or directs utilization review decisions.
108. HNS does not obtain all information required to make a valid utilization review decision, including pertinent clinical information, or employ a process to ensure that utilization reviewers apply clinical review criteria consistently.
109. HNS does not conduct its Utilization Review Process with reference to medical necessity, coverage provisions of applicable health insurance policies or plans, and with reference to any specific patient or sampling of patients.
110. HNS averages all of its members’ cost per patient by Insurer (“Network Average”), and then compares individual member average cost per patient by Insurer (“Individual Provider Average”) to the Network Average.

111. The Utilization Review Process has the effect of denying covered services to patients and denying Plaintiffs the agreed upon compensation for services provided.
112. HNS's Utilization Review Process assumes that every chiropractor's patient population is essentially identical, and that any difference in a chiropractor's average length and/or cost of treatment is attributable solely to individual chiropractor efficiency in providing treatment. This assumption is statistically and factually unsound.
113. Moreover, by implementing this approach, HNS systematically lowers reimbursements for services provided without regard to the medical needs of the covered patients or the benefits promised to these patients in their healthcare plans.
114. The effect of the above approach is to shift the cost of covered chiropractic services off of HNS and the Insurers and onto the supposedly covered patients and their Providers.
115. HNS threatens to terminate Providers who are found to have clinical experiences, the cost of which exceed HNS's "range of acceptance" of 150% of the Network Average regardless of the actual medical needs of the specific patient populations of those Providers. Failure of an individual Class Member Provider to bring that Provider's per patient average within 150% of the Network Average results in termination of the Class Member Provider. HNS's "range of acceptance" was originally 175% of the network average, but because there was "almost no one outside of [175%]," HNS lowered the range of acceptance to 150%.

116. HNS implements this approach by examining the per patient averages of each individual Provider preventing two chiropractors from sharing patients with one specializing in the routine low cost treatments and the other specializing in the higher cost more intensive treatment protocols. Treatment protocols and the mix of such protocols justified by the medical needs of the patients treated are irrelevant to HNS' analysis.
117. As a result of HNS's failure to consider medical needs of the patients actually treated by individual Providers, some number of Providers will have per patient average costs in excess of the HNS "range of acceptance" unless they limit their treatment of patients with the greatest medical needs or shift the cost of such treatment off of the Insurers.
118. Under HNS's Utilization Review Process, only a small fraction of patients for any one chiropractor are able to receive the number of treatments allowed by the Insurer regardless of how many treatments are medically appropriate for such patients and otherwise covered by the patients' healthcare plans.
119. For example, a patient insured by BCBSNC may be entitled to 30 or more chiropractic treatments under the terms of the patient's plan. HNS's process, limited a member Provider to providing, on average, far fewer visits per BCBSNC insured. HNS modified its process to focus exclusively on per patient cost after using the per patient visits approach to drive down the average number of visits and therefore, the average cost per patient. Nonetheless, depending on the medical condition of the insured and the treatment required by medical necessity, the number of permitted visits under the average per patient cost approach can be

and often is even fewer than before the modification. As a result, for a chiropractor to see a single patient the number of times allowed by their healthcare plan can require the chiropractor to see many other patients only once regardless of their clinical needs or conditions.

120. Under HNS's Utilization Review Process, only a small fraction of patients for any one chiropractor may receive the number of treatments recognized by the North Carolina Chiropractic Board of Examiners (the "Board") as within the range of acceptable utilization. In addition, being outside of HNS's "range of acceptance" for one Insurer, can result in termination even if the Providers are within the "range of acceptance" for other Insurers and overall.
121. In order for Providers to remain in good standing in the HNS Network, they must either shift the cost of medically necessary treatment off of the Insurers to the patient or the Provider or decline to treat patients even though care is medically necessary.
122. Complaints to HNS that patients cannot be provided all of the medically necessary or covered benefits available to them under their policies because of the HNS Utilization Review Process have resulted in counseling by HNS to its members about how they can and should "convert patients to cash," or not report the patient's visit to the Network, collecting only the co-pay, in order to remain in the Network.
123. Converting patients to cash is a denial of covered benefits under the applicable healthcare plans and a denial of agreed upon reimbursements for covered services provided by Providers.

F. Leveraging exclusivity

124. HNS has leveraged its exclusivity with the Insurers, which gives HNS market power, to discipline and police the Class Members.
125. The Insurers control a considerable majority of the market for insured healthcare services in North Carolina including chiropractic services. As a result, a Provider must be a member of the HNS Network to have in-network access to the vast majority of the chiropractic patients in North Carolina.
126. Because HNS controls such a large share of the market for chiropractic services, it has the ability to dictate not only prices and reimbursement rates, but also the quantity of covered services made available by the HNS Network to covered patients.
127. HNS has used this market power to restrict services and control prices in order to protect its exclusive contracts with the Insurers.
128. HNS has not used its market power for the benefit of the Providers by negotiating for the best reimbursement rates and for lower co-pay amounts.

G. Disparate Treatment of Chiropractors

129. The Individual Defendants, or some of them, fail to apply the same utilization review procedures and rules to themselves.
130. Upon information and belief, the Individual Defendants' practices, or some of them, are not now, or at relevant times have not been, within the various guidelines and rules developed and implemented by HNS as requirements for the Providers to stay in Network. HNS has not terminated the Individual Defendants from the Network.

131. Upon information and belief, HNS and the Individual Defendants, or some of them, have negotiated with the Insurers to provide more favorable reimbursements for specific procedures offered at their practices than for procedures offered by other chiropractors that are not offered by the Individual Defendants.

H. Price and Quantity fixing

132. In organizing its “IPA,” Defendants are an illegal cartel who conspire to engage in anticompetitive activities, the purpose and effect of which were to artificially suppress the availability of chiropractic services in North Carolina, especially, but not limited to, the availability of such services to covered patients of the Insurers.

133. Defendants organized a network joint venture whose practitioners do not share financial risk.

134. Defendants organized a network joint venture without clinical or financial integration. This network includes more than fifty percent of the licensed Providers in North Carolina.

135. Defendants used the Insurers’ market power to build a purported IPA network including more than half of the licensed Providers in North Carolina allowing them to fix the price and limit the quantity of chiropractic services in North Carolina for their own benefit as well as the Insurers’.

136. Defendants use their Utilization Review Process to lower the availability of chiropractic services in North Carolina for their own benefit.

137. Defendants use their Utilization Review Process to deprive covered insureds of covered services for Defendants’ benefit by forcing Providers to not submit

claims, to convert patients to cash, and/or forcing Providers to deny services to patients.

138. Defendants' primary goal was, and is, to maintain exclusivity with the Insurers using the strategy of artificially and illegally lowering the Insurers' costs, to preserve the Defendants' ability to receive payments from the Insurers, and to charge Providers a percentage of their reimbursement fees including co-pays.

I. HNS Violated Duties to Class Members

139. HNS had the duty to inform Class Members of conflicts of interest inherent in HNS's dealings with the Insurers. HNS undertook, and purported, to represent the interests of the Providers in negotiations with the Insurers as to reimbursement levels, covered services and co-pays, among other terms, but failed to do so.
140. HNS failed to disclose material relevant facts to the Class Members about its relationship with the Insurers and its Utilization Review Process including the compensation provided to HNS for credentialing and other services for which the Insurers' contracted with HNS. The details of HNS's contracts with the Insurers and the conflicts of interest created by those contracts have not been disclosed.
141. HNS had a duty to inform the Department of Insurance about the details of its contracts with the Insurers but failed to do so fully. The Utilization Review Process that HNS represented to the Department of Insurance as the process which it uses is not the actual process and procedures implemented by HNS in policing its Network and evaluating Providers.
142. HNS had a duty to comply with the provisions of Chapter 58 for the protection of the Providers, their patients and the public. HNS failed to so comply as more

fully described herein including but not limited to operation and implementation of an illegal and unlicensed medical service corporation and an illegal non-compliant Utilization Review Process.

J. Antitrust Violations

143. HNS through its exclusive contracts with the Insurers has monopsony or monopoly power in the market for chiropractic services in North Carolina and uses that power to dictate financial terms and conditions under which Providers provide services to their patients in North Carolina as described more fully herein.
144. Purchasers of chiropractic services are price sensitive and the demand for chiropractic services is highly elastic. Patients are much more likely to see an in-network Provider due to lower deductibles, lower initial out of pocket costs and enhanced reimbursements, among other reasons.
145. HNS has used its market power to coerce excessive and unnecessary percentage based fees and other items of value from the Providers it permits to be in the HNS Network. These fees and costs, as well as HNS's failure to negotiate and obtain reasonable co-pays in line with co-pays established for other healthcare providers has increased the cost to patients of obtaining chiropractic services in North Carolina and has restricted the services which Providers are able to offer as covered services.
146. The relevant product and geographic markets are the market for chiropractic services in North Carolina and the market for insured chiropractic services in North Carolina. The HNS Network at issue operates primarily, if not exclusively, in the state of North Carolina. Chiropractic services are distinct from other

medical and therapy treatments because, among other distinctions, of the focus on spinal manipulation, the methodological distinctions between chiropractic and medicine, the distinctions in training between chiropractors and other healthcare providers such as physical therapists, the absence of surgical intervention as a treatment modality and the licensure of chiropractors permitting them to treat patients directly instead of through a tiered structure of physician oversight and direction of physical therapy and similar medicine based treatments.

147. Patients are unlikely to switch to other healthcare provider services in response to increases in the price of chiropractic services. Patients are likely to switch between or among chiropractors in response to price changes.
148. Defendants' conduct has resulted and will continue to result in significant harm to competition in the form of fewer service choices for patients, lower quality for available services, fewer covered services available for patients, and increased co-pays and other out-of-pocket costs to patients. These harms have directly harmed the Providers in their business and property and adversely impacted competition in the relevant markets.
149. Providers have lost revenue from covered services for which promised reimbursements were not obtained in order for the Providers to seek to stay in the HNS network or from the inability of Providers to collect for or provide out of network services while excluded from the HNS network. Providers have lost revenue due to exclusion from access to patients whose treatment would cause the Providers to exceed HNS's "range of acceptance" in relation to the Network Average and due to exclusion from access to patients who choose in-network

Providers to avoid increased deductibles and other increased out-of-pocket costs.

Providers have lost revenue due to the percentage fee wrongfully extracted by

HNS through its anti-competitive, unfair and deceptive behavior.

K. HNS's Treatment of the Individual Plaintiffs

150. HNS has subjected the individual Plaintiffs to the Utilization Review Process and anti-competitive and wrongful conduct described herein.

151. Plaintiff Sykes was terminated by HNS from the HNS Network through application of the HNS Utilization Review Process.

152. Plaintiff Patrick was forced to resign from the HNS Network through application of the HNS Utilization Review Process.

153. Plaintiff Lynn is currently being threatened with termination from the HNS Network through application of the HNS Utilization Review Process.

154. Plaintiff Bost was initially prevented from joining the network and has subsequently decided not to join HNS's network because of the practices described herein.

155. The Plaintiffs who were members of HNS's network were not provided a meaningful opportunity to have their clinical experiences and costs evaluated in light of their specific patient pools and the medically appropriate treatments provided to those patients.

156. The Plaintiffs who were members of HNS's network were not provided an opportunity to have their clinical experiences and costs evaluated by a licensed utilization review organization.

157. The Plaintiffs who were members of HNS's network were not provided an opportunity to have their clinical experiences and costs evaluated by an integrated member provider-controlled organization in which member providers shared risks regarding costs, patient outcomes and clinical protocols.
158. All of the actions taken against Plaintiffs were undertaken by an unlicensed business corporation providing a medical services plan to the Insurers operating a purported IPA network consisting of more than fifty percent of the licensed Providers in the relevant markets.
159. Plaintiffs' damages are representative of the Class including both Providers operating within the HNS Network and Providers operating outside of the HNS Network.
160. Plaintiff Lynn is threatened with imminent exclusion from the HNS Network which will irreparably limit his ability to provide covered services to existing and future patients disrupting ongoing and medically appropriate care and depriving Lynn of both revenue and important professional opportunities. Money damages can only partially, and never fully compensate Plaintiffs and the Providers for the damages inflicted by HNS's wrongful and anticompetitive conduct.

FIRST CLAIM FOR RELIEF
(Declaratory Judgment)

161. Plaintiffs re-allege and incorporate by reference the allegations contained in Paragraphs 1 through 160.
162. Plaintiffs seek declaratory relief pursuant to N.C. Gen. Stat. § 1-253 as to the rights of Plaintiffs and the Class and as to the status and conduct of HNS including declarations on the facts and law that:

- a. HNS is an unlicensed medical service corporation without the authority to enter into an agreement to provide chiropractic services to the Insurers;
- b. HNS is an unlicensed medical service corporation without the authority to enter into participation agreements with Providers;
- c. HNS is not licensed or authorized to provide utilization review of chiropractors including the Providers;
- d. The purported agreements between HNS and Providers are illegal and unenforceable;
- e. The purported agreements between HNS and Providers are an illegal restraint of trade and anti-competitive;
- f. The exclusivity provisions of the contracts between HNS and the Insurers are illegal, anti-competitive, unreasonable restraints of trade and unenforceable; and
- g. Defendants have restrained trade, monopolized, and monopsonized the market for chiropractic services in violation of N.C. Gen. Stat. §§ 75-2 and 75-2.1.

SECOND CLAIM FOR RELIEF
(Price Fixing, Monopsony and Monopoly)

- 163. Plaintiffs re-allege and incorporate by reference the allegations contained in Paragraphs 1 through 162.
- 164. Defendants organized an IPA without sharing financial risk, without integration, and without benefitting ultimate consumers. Defendants have entered into a per se price fixing agreement, in violation of N.C. Gen. Stat. § 75-1 and have coerced

Class Members to accept the fixed prices through its exclusive contracts with the Insurers and its Utilization Review Process.

165. In the alternative, if evaluated under the rule of reason, the Defendants' actions are an unreasonable restraint of trade in violation of N.C. Gen. Stat. § 75-1.
166. In organizing its IPA, Defendants are an illegal cartel who conspire to engage in anticompetitive activities, the purpose and effect of which is to artificially suppress the availability of chiropractic services in North Carolina and control prices and quantities. These activities include the following, among others:
 - a. Organizing an exclusive, or non-exclusive network joint venture whose practitioners do not share financial risk;
 - b. Organizing an exclusive, or non-exclusive network joint venture without any clinical or financial integration;
 - c. Using the Insurers' market power to fix the price of chiropractic services in North Carolina; and
 - d. Using its utilization review procedures to continuously lower the availability of chiropractic services in North Carolina and to control prices and quantities for chiropractic services in North Carolina.
167. The illegal conspiracy had the following effects, among others:
 - a. Price competition in the pricing for chiropractic services has been restrained, suppressed, or eliminated;
 - b. Prices paid for chiropractic services provided by Defendants and Class Members are being fixed, maintained, and/or stabilized at artificial, non-competitive levels;

- c. Payments received by Class Members for chiropractic services are being fixed, maintained, and/or stabilized at artificial, non-competitive levels; and
 - d. Class Members have been deprived of the benefit of free and open competition.
168. Plaintiffs and the Class have no adequate remedy at law for their irreparable injuries.
169. Accordingly, Plaintiffs and the Class seek compensatory and treble damages from Defendants, a declaratory judgment that Defendants' actions complained of herein are violations of the prohibition against restraint of trade, attempts to monopsonize, or attempts to monopolize under N.C. Gen. Stat. §§ 75-2 and 75-2.1, a permanent injunction enjoining Defendants' continuing violation of Sections 75-2 and 75-2.1, disgorgement of revenue and profits obtained in violation of the law, an accounting as to all such revenue and profits and a constructive trust on all funds obtained through Defendants' wrongful and illegal conduct.

THIRD CLAIM FOR RELIEF
(Unfair and Deceptive Trade Practices and Acts)

170. Plaintiffs re-allege and incorporate by reference the allegations contained in Paragraphs 1 through 169.
171. Defendants all practice chiropractic and are competitors with Class Members.
172. At all relevant times, Defendants were engaged in Commerce in North Carolina.
173. Defendants' actions and conduct that constitute unfair and deceptive trade practices include, but are not limited to:

- a. promoting a scheme to impede competition and restrict prices;
- b. organizing a cartel and calling it an IPA in order to reduce competition, with no integration and no benefits to ultimate consumers;
- c. organizing a cartel primarily to support its joint venture and not to achieve substantial efficiencies to benefit consumers;
- d. implementing a utilization review procedure without being licensed to do so;
- e. failing to follow statutory requirements for utilization review;
- f. restricting the number of covered services that a Provider can provide to insured patients, by the utilization review process, as implemented by Defendants through HNS;
- g. organizing a medical service corporation without being licensed to do so;
- h. using their Insurers' combined market power to dampen competition and control chiropractic services in North Carolina;
- i. failing to disclose their conflicts of interest;
- j. misrepresenting their services and the benefits provided to Providers participating in the HNS Network; engaging in those acts and practices described in this complaint in restraint of trade and unfairly excluding Providers from access to patients, earned or promised reimbursements, fair competition, and professional freedom to provide patients those

covered services to which they are entitled under their various health plans based upon clinically recognized criteria;

k. Using the cartel's power to extract a percentage fee from the providers.

174. Defendant's unfair and deceptive trade practices have damaged Class Members in an amount in excess of \$10,000, and Class Members are entitled to have their damages trebled and to recover attorneys' fees.

FOURTH CLAIM FOR RELIEF
(Breach of Fiduciary Duty)

175. Plaintiffs re-allege and incorporate by reference the allegations contained in Paragraphs 1 through 174.

176. Defendants purport to promote an "integrated IPA" and therefore are purporting to pursue a joint venture with Class Members.

177. As management of the joint venture, Defendants owe fiduciary duties to the Providers.

178. Defendants breached their duties by:

- a. failing to operate the IPA in a pro-competitive manner and for the benefits of the members of the IPA as a whole;
- b. failing to negotiate with the Insurers for the benefit of the Providers;
- c. promoting a scheme to impede competition and restrict prices;
- d. organizing a cartel and calling it an IPA in order to reduce competition, with no integration and no benefits to ultimate consumers;
- e. organizing a cartel primarily to support their own interests and not to achieve substantial efficiencies to benefit ultimate consumers;

- f. promoting a utilization review procedure without being licensed to do so;
- g. failing to follow statutory requirements for utilization review;
- h. restricting the number of covered services that a Provider can provide to insured patients, by the utilization review process, as implemented by Defendants;
- i. organizing a medical service corporation without being licensed to do so;
- j. using their Insurers' combined market power to dampen competition and control chiropractic services in North Carolina;
- k. failing to disclose their conflicts of interest;
- l. misrepresenting their services and the benefits provided to Providers participating in the HNS Network;
- m. Using the cartel's power to extract a percentage fee from the providers; and
- n. engaging in those acts and practices described in this complaint in restraint of trade and unfairly excluding Providers from access to patients, earned or promised reimbursements, fair competition, and professional freedom to provide patients those covered services to which they are entitled under their various health plans based upon clinically recognized criteria.

179. Plaintiffs and Class Members have been damaged by Defendants' breaches of duty in an amount in excess of \$10,000 and are entitled to disgorgement of profits, an accounting and a constructive trust to remedy these breaches of duty.

FIFTH CLAIM FOR RELIEF
(Punitive Damages)

180. Plaintiffs re-allege and incorporate by reference the allegations contained in Paragraphs 1 through 179.

181. The above described acts and omissions of Defendants were willful, wanton, gross, and outrageous, with reckless indifference to Plaintiff's rights and interests, and justify the imposition of punitive damages in order to punish Defendants and to deter such conduct in the future.

WHEREFORE, Plaintiffs pray:

- A. That this Court certify the Plaintiff Class and that Plaintiffs have trial by jury;
- B. That this Court declare the facts and law as more specifically requested in paragraphs 1 to 181 above;
- C. That this Court permanently enjoin and restrain Defendants, their affiliates, successors, transferees, assignees, and the officers, directors, partners, agents and employees thereof, and all other persons acting or claiming to act on their behalf, from in any manner, continuing, maintaining, or renewing the contract, combination or conspiracy alleged herein, or from engaging in any other contract, combination, or conspiracy having similar purpose or effect, and from adopting or following any practice, plan program, or device having a similar purpose or effect, including, without limitation, a permanent injunction against a Utilization Review Process based upon averaged per patient cost

average per patient visit, or any other criteria which fails to conform to Chapter 58 of the North Carolina General Statutes;

- D. That this Court disgorge Defendants of the monies collected through its purported IPA, illegally formed and maintained;
- E. That this Court impose a constructive trust to the benefit of the Class Members of all profits and monies delivered to Defendants from their illegal contracts and disgorge such profits and monies to the Class;
- F. That the Class Members have and recover from Defendants an amount exceeding \$10,000.00 as compensation for damages caused by their illegal and tortious and otherwise actionable conduct, plus treble damages and an award of attorneys' fees pursuant to N.C. Gen. Stat. § 75-16, or as otherwise provided by law;
- G. That this Court award Plaintiffs punitive damages;
- H. That the costs of this action be assessed against the Defendants;
- I. That Plaintiffs and the Class have such additional relief as requested above or as the Court deems just and proper.

Respectfully submitted this 28th day of July, 2013.

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was served by the North Carolina Business Court electronic filing system and electronic mail addressed to the following:

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This the 28th day of July, 2013.

Oak City Law LLP

/s Robert E. Fields III
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