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ORAL STATEMENT ON BEHALF OF PAI

Before the Connecticut Department of Insurance, November 23, 2009

Good morning/afternoon.

My name is Robert Seligson. I am the President of the Physicians Advocacy Institute, Inc. ("PAI") and the Executive Vice President and CEO of the North Carolina Medical Society. I am here today on behalf of PAI to give a brief statement in opposition to the proposed acquisition of control of Health Net by Oxford and United.

PAI is a not-for-profit 501(c)(6) advocacy organization established in 2006 with funds from the Multi-District Managed Care Litigation class action settlements against the major national for-profit health insurers. PAI's mission is two-fold: 1) to guarantee compliance with the settlement agreements reached in the Managed Care Litigation, including the Health Net Settlement Agreement; and 2) to develop projects and tools for the future that guarantee the viability of physicians' medical practices and the ability of physicians to deliver high quality patient care. PAI's Board of Directors is comprised of the CEO's of several of the state medical societies which filed the Managed Care Litigation, including the CEO of the Connecticut State Medical Society, Matthew Katz.

PAI opposes approval of the acquisition because we are concerned that it would overly consolidate the insurance market in Connecticut to the detriment of Connecticut's patients and physicians. If the acquisition is approved, however, we would urge the Department to make such approval contingent on requiring United to comply with the Health Net Settlement Agreement and its physician contract addendum.

The Managed Care Litigation began with several class action lawsuits brought by physicians and many state and county medical societies, including CSMS, against many of the for-profit health insurers, including Health Net and United. The lawsuits alleged that the insurers conspired to defraud physicians and patients of reimbursement owed for health services provided to their insureds and that the insurers violated state prompt pay and deceptive trade practices laws, including the laws of Connecticut.

Settlements were eventually reached with several insurers including Health Net, Aetna and CIGNA. United has steadfastly refused to settle the case.

All the settlement agreements consisted of three components: (1) dollars to physicians, to physician-controlled foundations, and/or to PAI; (2) changes in the insurers' business practices designed to promote transparency and fairness in the health insurers' transactions with physicians; and (3) a compliance process designed to ensure that the health insurers fulfilled their obligations to make the required business changes. Therefore, PAI has intervened in this proceeding to fulfill its mission of enforcing the Health Net Settlement Agreement and, if the acquisition is approved, ensuring that United does not use its considerable market power to unfairly burden Connecticut's physicians and patients.

For physicians, the most valuable component of the settlements was the change in payment policies and business practices intended to make health insurers' interactions with physicians much fairer and more transparent. The required business changes were also intended to eliminate some of the most vexing bureaucratic hassles of dealing with health insurers, allowing physicians to spend more time caring for patients.

For example, Health Net's Settlement Agreement required it to use a clinically based definition of medical necessity, to provide 90 days advance written notice of material adverse changes, to generally follow CPT® coding rules, to provide physicians with their fee schedules and payment rules, to pay physicians promptly and to pay interest on late paid claims. In addition, the Health Net Settlement Agreement prohibited it from including all products or gag clauses in its physician contracts and from automatically downcoding evaluation and management codes.

Many of these protections also benefit patients. For example, the requirement that Health Net use a clinically based definition of medical necessity means that decisions regarding patient treatment will not be based solely on cost. And, the prohibition on gag clauses means that physicians can speak openly with patients regarding available treatments, even if a recommended treatment is not a covered benefit under their Health Net insurance plan.

The compliance component of the Health Net and other settlement agreements established a streamlined process which medical societies and physicians could use to file disputes alleging that Health Net had violated the Settlement. One such compliance dispute alleged that Health Net's physician contracts did not comply with its Settlement Agreement.

The dispute was resolved after mediation, with Health Net agreeing to send a contract addendum to all of its participating physicians along with a cover letter. The addendum clarified Health Net's contractual obligation to comply with its Settlement Agreement. For example, it included the improved medical necessity definition, the gag

clause prohibition, and the requirement that Health Net provide advance notice of material adverse changes.

The AMA has already testified about the anti-competitive effect of the proposed acquisition and about its detrimental impact on Connecticut's physicians and patients. In such an environment, it is more important than ever that the Settlement Agreement and contract addendum remain in effect. However, unless this Department conditions any approval on a requirement that the merged entity comply with the Settlement Agreement and contract addendum, the merged entity is not likely to be bound by these documents. This is because under the Settlement Agreement, an acquiring company is only required to comply with the Settlement if it operates Health Net as a separate affiliate. Because United is primarily seeking acquisition of Health Net's renewal rights, it is doubtful that Health Net will be managed as a separate affiliate. In addition, United's refusal to settle the Managed Care Litigation reinforces our concern that it will not voluntarily agree to abide by the Settlement Agreement. And, even if it did agree, the Health Net Settlement Agreement ends on July 1, 2010. Therefore, PAI would urge the Department to condition any approval of United's acquisition of Health Net on a requirement that the merged entity continue to comply with the Settlement Agreement and contract addendum.

Such a requirement would not put United at a competitive disadvantage because other insurers have voluntarily agreed to maintain in effect most of the important provisions of their settlement agreements. For example, Aetna worked with PAI to develop its Guiding Principles for Physician Relations which state its commitment to continue the most important settlement provisions. CIGNA and Humana made similar verbal commitments, although they have not reduced these commitments to writing.

In conclusion, the AMA has shown that the effect of the proposed acquisition would be to overly concentrate the commercial health insurance market, lessening the competition for health insurance in Connecticut. This would make health insurance more expensive, would reduce the quality of the coverage available to consumers, and would allow the merged entity to reduce physician reimbursement rates. Therefore, the Department should not approve the acquisition.

However, if the Department approves the acquisition, it should condition its approval with measures designed to prevent the merged entity from using its market power to employ anti-competitive business practices to the detriment of Connecticut's physicians and patients. At a minimum, any approval should be conditioned on a requirement that the merged entity comply with the Health Net Settlement Agreement and contract addendum and that this requirement extend beyond the Settlement Agreement's scheduled termination date of July 1, 2010. Such a requirement would go a long way toward ensuring fair treatment of Connecticut's physicians and patients and promoting transparency in the merged entity's business practices.