

Testimony of

# Mr. Richard Bednar

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SUBCOMMITTEE ON ANTITRUST, COMPETITION POLICY AND CONSUMER  
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TESTIMONY OF RICHARD J. BEDNAR  
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Good afternoon. I am Dick Bednar; the Coordinator of the Healthcare Group Purchasing Industry Initiative ("HGPII"), a position I have held since December 2005. I am pleased to report that this initiative is off and running on a sure path to success. We welcome this opportunity to tell you about this major GPO-industry development; a permanent, all voluntary, self-governing organization, committed to the highest level of ethical conduct in providing the best and safest products to patients, doctors and health care workers at competitive prices. In this testimony, I will be telling you a little about my qualifications as Coordinator, briefly describe the HGPII background, review quickly its guiding principles and public accountability process, mention achievements to date, explain our confidence that this GPO Initiative's self-governance process will work to assure ethical business conduct, and conclude by emphasizing the Initiative's transparency and public accountability. For brevity, I will refer to the Healthcare Group Purchasing Industry Initiative as the "GPO Initiative" or simply as "the Initiative".

## COORDINATOR'S BACKGROUND

Before moving into the substance of this hearing, I want briefly to describe my qualifications. This is important because the Coordinator has a key role in assuring that the GPO Initiative is true to its commitments. I have had substantial experience evaluating, judging and helping frame organizational ethics and compliance programs. As the former Army debarring official, I often evaluated a government contractor's internal controls and ethical culture in deciding whether the contractor could be trusted as a government contracting partner. Second, as the current Coordinator of the Defense Industry Initiative on Business Ethics and Conduct ("DII"), I annually review each member company's certified and documented report of its ethics and conduct program to assure compliance with the DII principles. I also served recently on the Advisory Group to the U.S. Sentencing Commission on organizational sentencing guidelines, which resulted in congressionally approved changes effective November 2004. Chapter Eight of those guidelines lays out what many regard as the "gold standard" for all organizations to follow in developing programs to prevent and detect violations of law. Currently, I counsel clients on compliance matters as a significant part of my practice of law with Crowell & Moring LLP, where I have been since 1987.

## HGPII PURPOSES, ORGANIZATION AND DEVELOPMENTS

The GPO Initiative has three main purposes. First, it is intended to nurture and to promote an ethical culture of compliance within every organization in the GPO industry. Second, the Initiative promotes self-governance as the means of confirming management's commitment to abide by ethical standards, and to discover and to correct instances where conduct falls below these standards. Third, the Initiative enforces a requirement that each organization in the GPO Initiative share best practices in dealing with ethics and business conduct issues. This sharing of practices is done both informally by communication among compliance officers as issues arise, and by participating in the annual "Best Practices Forum" at which the key compliance risk areas for the industry are openly discussed and internal control measures shared to reduce instances of noncompliance.

The GPO Initiative was founded in May of 2005 by the CEOs of nine of the nation's largest group purchasing organizations. The Initiative's founding members are Amerinet, Broadlane, Child Health Corporation of America, Consorta, GNYHA Ventures, Inc., Healthtrust Purchasing Group, MedAssets Supply Chain Systems, Novation and Premier. These organizations represent an estimated 80 percent or more of the volume of purchases through GPOs.

The Steering Committee is the governing body of the GPO Initiative and functions like a board of directors. The Steering Committee is comprised of the CEOs of the nine founding GPO members. There also is a Working Group, which works with the Coordinator in carrying out the day-to-day GPO Initiative programs and activities.

The GPO Initiative is modeled after the respected Defense Industry Initiative on Business Ethics and Conduct (DII), with which I am confidently familiar. The DII is widely held to be a success story. The DII was established in June 1986 by the CEOs of a small group of large defense companies. The DII has grown to over 65 companies, and continues to experience strong public and government confidence in its sincere commitment to the highest ethical and conduct standards.

The Initiative I am reporting on today, the GPO Initiative, is the result of many months of careful study and planning during the period of March 2002 to May 2005. The GPO Initiative is by no measure a hastily prepared "Quick Fix." To the contrary, countless hours of study, reviews, reflection and consulting with outside ethics experts, like Dr. Kirk O. Hanson of the Markula Center for Applied Ethics, Santa Clara University, have gone into establishment of this permanent institution. The GPO Initiative was encouraged by the members and staff of this Subcommittee in discussions and appearances during 2002 through 2004. For example, at the September 14, 2004 hearing, Chairman DeWine suggested that the GPO industry could set up a "voluntary plus" approach, pursuant to which voluntary adherence to ethics codes would be enforced as a continuing effort. In the spirit of that encouragement, the CEOs of the nine founding GPOs agreed on deliberate purposes, and otherwise shaped the organization of the GPO Initiative, centered on a strong commitment to ethical business practices and demonstrated by transparency.

In February of 2005, as GPO Initiative neared its formal launch, representatives met with Chairman De Wine and Senator Kohl to report on progress toward founding of the GPO Initiative. Throughout the development, the GPO Initiative has kept the staff of the Subcommittee informed of its progress. The unmistakable objective of the GPO Initiative is that it is a permanent institution, dedicated to the continuous improvement of policies and practices in the industry, and within a culture of compliance.

The GPO Initiative requires each signatory company to pledge to follow six core ethical principles, to report annually on adherence to these principles using a Public Accountability Questionnaire, and to participate with other GPO representatives and other interested parties in an annual Best Practices Forum on business conduct practices.

The six principles are:

- (1) Each Signatory shall have and adhere to a written code of business conduct. The code establishes high ethical values and sound business practices for the Signatory's group purchasing organization.
- (2) Each Signatory shall train all within the organization as to their personal responsibilities under the code.
- (3) Each Signatory commits itself to work toward the twin goals of high quality healthcare and cost effectiveness.
- (4) Each Signatory commits itself to work toward an open and competitive purchasing process free of conflicts of interest and any undue influences.
- (5) Each Signatory shall have the responsibility to each other to share their best practices in implementing the Principles; each Signatory shall participate in an annual Best Practices Forum.
- (6) Each Signatory, through its participation in this Initiative, shall be accountable to the public.

#### BEST PRACTICES FORUM

On January 11, 2006, the GPO Initiative held its second Steering Committee meeting. All nine of the founding CEOs personally attended that meeting, where the course was set for the rest of this year.

Then, on January 12 and 13, 2006, the Initiative held its initial Best Practices Forum; the agenda has been provided for the record. About 100 registrants participated in the Forum, including all nine of the founding CEOs, and many

senior GPO executives. The discussion was open, frank and substantive. The discussion ranged from competitive award strategies, to handling vendor grievances, to encouraging breakthrough technology, to avoiding conflicts of interest, and to further promoting small business and diversity initiatives.

As a direct result of the Forum, the participants have established two working committees, one to address compliance; the second to address diversity and small business matters.

I am very pleased to repeat that this GPO Initiative is off and running on a path destined for success.

## PUBLIC ACCOUNTABILITY

The Annual Accountability process requires each organization to respond publicly to a 19 item questionnaire and provide electronic links to backup internal policies and procedures, which also are available to the public. This accountability process addresses such questions as whether the organization has and adheres to a code of conduct; whether it follows appropriate conflict of interest policies; and whether its policies regarding administrative fees and bundling are free from provisions that create inappropriate incentives. These are merely examples of the probing questions which must be answered and documented. We have submitted copies of the Initiative Charter and Annual Public Accountability Questionnaire for the record, and these are available publicly on the GPO Initiatives' website.

These documented responses annually are provided to me as the Coordinator, who has the responsibility for making an independent, detailed review. When I am satisfied that the responses demonstrate the commitment the GPO Initiative expects of all its members, I will approve each answer as responsive, complete, and fairly given. Once approved, the responses to the questionnaires are individually posted on the Initiative website: [www.healthcaregpoii.com](http://www.healthcaregpoii.com).

In responding to the Annual Public Accountability Questionnaire, each organization must reveal substantial detail about its business policies and practices. The degree of transparency required by the Annual Public Accountability Questionnaire is extensive and, to my knowledge, unprecedented in the voluntary practices of any other industry. For example, each company describes its practices in such areas as (i) disclosure of requirements for vendors to be acceptable identified as potential bidders; (ii) a fair and unbiased system for evaluating products and services considered for procurement; (iii) standards for appropriate use of sole, single and multi-source procurement; (iv) an approach to administrative fees which insures that the interests of the GPO do not supplant those of the member organizations; and (v) guidance for appropriate bundling of products and the length of contracts. Each company must also provide adequate supporting documentation to permit the Coordinator to determine that each answer to the questionnaire is responsive, complete, and fairly given. This public disclosure of ethical and business conduct practices, which the GPOs believe assure adherence to the Initiative's six core principles, will open the responses of these practices for all to see and judge.

## SELF GOVERNANCE WILL WORK

Having described the purposes, the organization, and the accountability process, I now move on to describe why we believe this self-governance process will work.

There are several ways in which the GPO Initiative shapes ethical practices. First, it is expected that participation in the Initiative itself will become a key criteria for hospitals and other providers when selecting membership in a GPO. In fact, hospitals already have begun to require that a GPO be a participant in the Initiative as a condition for that hospital's participation in a GPO. The American Hospital Association, Association of American Medical Colleges, Catholic Health Association of the United States, Federation of American Hospitals, National Association of Children's Hospitals, National Association of Public Hospitals and Health Systems and the National Rural Health Association, have endorsed this process. Being acutely concerned about the integrity of their supply chain, we expect that hospital boards of directors will look for positive assurance that their GPO is committed to and is monitoring its own ethical behavior. Participation in the GPO Initiative will provide that assurance.

Second, participating GPO organizations are required to enlarge their ethical and business conduct practices as necessary in order to respond affirmatively to each of the questions in the Annual Public Accountability

Questionnaire. This has led all participating GPOs to examine their own practices to assure that they adhere to the GPO Initiative principles.

Third, the executives and boards of the hospital systems will be able to scrutinize the specific practices of the GPO to which they belong and compare those practices with other GPOs outside of the GPO Initiative. This competitive pressure will give providers leverage to encourage, and even, to demand, changes to GPO business practices.

Fourth, the disclosure of each organization's practices to the public will bring a level of visibility not present in any other industry. This will allow scrutiny by the press, by those who may be skeptical, and by this Subcommittee of the business policies and practices of the GPOs. The transparency will further assure GPO business practices are in harmony with the expectations of the Congress and the public.

Fifth, key practices, particularly those where there may be significant differences, are to be discussed at each annual Best Practices Forum openly in front of their peers and invited guests. Practices considered "best" by the Working Group and the Coordinator will be featured and information will be available regarding how to implement featured best practices. In this regard, persons outside of the Initiative will be invited to participate in all future Best Practices Forums.

Sixth, we expect that over time the policies and practices required to justify continued participation in the GPO Initiative will evolve and strengthen. The standard expected in response to each Public Accountability Questionnaire will rise, creating a virtuous cycle which raises the practices of all companies in the industry.

While the central focus of the Initiative is to encourage good ethical practices, there is a procedure for suspending a GPO's participation or membership in the Initiative of any GPO which fails to fulfill its obligations under the Initiative. I believe this step will be a rare one, as the stigma and competitive impact of being suspended from the GPO Initiative would be substantial. Instead, I expect that encouragement by peer CEOs and the Coordinator will readily resolve any perceived shortcomings in the commitment to the Initiative's principles. Should a serious ethical failure equate to criminal or civil misconduct, there are ample means already in existence to address such failures.

#### THE GPO INITIATIVE IS IN HARMONY WITH THE PUBLIC'S DEMAND FOR SELF-GOVERNANCE

The self-governance undergirding of this Initiative is in harmony with the wave of expectations for self-governance currently nudging all organizations. I refer to the explicit and implicit guidance in the Sarbanes-Oxley Act, the Rules of the New York Stock Exchange, Chapter 8 of the U.S. Sentencing Commission Guidelines for Organizations, the January 2003 memorandum from the Deputy Attorney General of the United States stating compliance expectations, to the Standards of Conduct Regulations of the Department of Defense, HHS, and other federal agencies. These authorities all recognize that the willingness to follow ethical practices arises out of an organizational culture of compliance, rather than from unwelcomed restraints imposed by external rules. Behavior follows expectations, and the GPO Initiative's expectations are high.

Additionally self-governance keeps GPOs focused on best practices, not minimal compliance with regulations. Unfortunately, it is an unavoidable outcome of regulation that the focus tends to shift to satisfying the letter of the law rather than its spirit.

Self-governance also can better address the existing differences between the business models of the various GPOs. Some GPOs are stand-alone enterprises and some are subsidiaries of larger entities; some GPOs package broad consulting services with purchasing while others do purchasing only. This means that their customers, i.e. health care providers, have a wide variety of choices about how they can purchase their supplies efficiently. The extensive information about GPOs that will be available publicly through the Initiative will permit healthcare providers to easily compare GPOs and select the model or models that best suit their needs.

We believe that achieving exemplary ethics and business practices across an industry is something that will occur only if the leadership of the industry makes a significant commitment to achieve the articulated standards. With this Initiative, each CEO is pledging that his or her organization will achieve the ethical and business conduct standards that are addressed in the core principles and the questionnaire, and will do so with extraordinary transparency. Each

participating GPO will do this because they have chosen to do it voluntarily.

This voluntary, self-governance initiative is the best way to achieve lasting change.

## THE FUTURE

The Congress can expect continued transparency from the GPO Initiative, and significant open debate about particular practices in the GPO industry. This will demonstrate that the Initiative is working as planned. The transparent scrutiny and debate over practices will be what assures a culture of compliance within the industry.

While the nine initial original members of the GPO Initiative represent the overwhelming majority of volume handled by GPOs, it is important to invite all other GPOs to join. We have already opened the door to other GPOs to join in this initiative - these invitations have resulted in new members, including one based in Canada, and have already generated a productive dialogue about the Initiative, its accomplishments, and its plans. A broader invitation is planned for the coming months, so that new Initiative members can participate in the next Best Practices Forum, to be presented in January of 2007.

It is also important that the transparency and scrutiny of practices made possible by the Initiative be extended to other parts of the healthcare industry supply chain. I understand that there is substantial concern about the practices in links in the supply chain other than GPOs. Our vision is that a similar ethics initiative featuring extensive transparency and regular accountability will eventually be embraced and practiced by other components of the healthcare industry.

We believe that this permanent, voluntary effort will serve the goals so strongly advocated by members of this Subcommittee, and fully embraced by the GPOs which formed the Initiative. Through communication among GPO Initiative members, the industry and this Subcommittee, and by continued transparency, we are confident that the Initiative will result in a GPO industry that warrants the trust and confidence of the public and of the hospitals and the communities they serve.

Thank you.