

Testimony
United States Senate Committee on the Judiciary
Hospital Group Purchasing: Has the Market Become More Open to Competition?
July 16, 2003

Ms. Elizabeth Weatherman
VICE CHAIR , NATIONAL VENTURE CAPITAL ASSOCIATION

STATEMENT OF ELIZABETH H. WEATHERMAN
VICE CHAIR, MEDICAL GROUP,
NATIONAL VENTURE CAPITAL ASSOCIATION;
MANAGING DIRECTOR,
WARBURG PINCUS LLC

BEFORE THE ANTITRUST, BUSINESS RIGHTS AND COMPETITION SUBCOMMITTEE
OF THE U.S. SENATE JUDICIARY COMMITTEE

JULY 16, 2003

Good Morning. My name is Bess Weatherman. As Vice Chair of the Medical Industry Group of the National Venture Capital Organization, I am honored to have the opportunity, once again, to address this committee on behalf of over 500 professional venture capital and private equity firms dedicated to the successful development of innovative technologies and services. Collectively, our members have invested more than \$240 billion over the past 21 years, funding nearly all the most important technological breakthroughs of this period. A substantial number of our firms invest heavily in the life sciences field, including biotechnology, drug delivery, medical devices and diagnostics. Over the last 12 months alone, the venture capital community has invested more than \$3.5 billion in new and emerging medical technologies.

First, I would like to thank the Committee, with Senators DeWine and Kohl at the helm, for their tremendous efforts toward creating a climate where nascent life sciences companies can pursue the development of groundbreaking technologies that will ease pain, reduce suffering, lower the cost of care, and improve and extend lives.

Young life sciences companies are dependent on venture investors because their capital needs are so large, and their path to market is so long and sometimes tortuous, that they are unable to access bank financing or other more traditional sources of capital. Without patient investment from the venture capital community, the life sciences industry would be virtually nonexistent. Venture capital has financed the development of such breakthrough medical technologies as MR imaging, ultrasound, angioplasty, implantable defibrillators, spinal implants and pulse oximetry; as well as drugs for a whole host of previously incurable diseases, not to mention therapeutics to treat such major killers as heart disease and cancer. These advancements have had a huge and enduring impact on improving the lives of Americans, from geriatrics to newborns.

As I reported to you last year, the venture capital industry exists, in part, because the antitrust philosophy of the United States prevents entrenched, unmovable competitors from abusing their market power to unfairly restrain competition. By their very nature, virtually every company we

finance is a “revolutionary” and a threat to the established order. The technological innovations they develop, whether in telecommunications or medicine, are inevitably threats to some existing larger competitor who will use all means at its disposal to defend itself.

New medical technology companies, in particular, face a daunting course as it is, in order to get their products to patients. Venture investing in new medical technology is risky enough without the potential for encountering a GPO roadblock.

The possibility of anti-competitive practices on the part of GPOs serves to erode venture capital confidence in fair access to medical markets, and unnecessarily increases the risk that a new medical technology will fail to run what is already frequently a fatal gauntlet to market.

By shining a spotlight on the GPO industry’s business models, practices and ethics, this committee has initiated a process that could prove to be vital to ensuring that anticompetitive business practices will not artificially limit access to medical markets for young companies. We applaud your efforts and achievements thus far. However, we remain concerned that the voluntary adoption by GPOs of non-uniform Codes of Conduct will not be enough. And worse yet, that the GPO’s willingness to adhere to them will not last once the oversight by this committee is gone.

Last year, the Group Purchasing Organizations industry responded to your call to action by creating a Code of Conduct for its members that addressed the Committee’s concerns about ethics and conflicts of interest. Standard industry-wide practices were established. Unfortunately, from our perspective, the concept of ‘standard practices’ allows too much latitude for interpretation by individual GPOs -- many of whom have not impressed us in the past with their ability to police themselves.

Every individual’s notion of what is ‘ethical’ is different. Every corporate culture is different. We believe that creating, adopting and implementing a Code of Conduct to varying degrees in an industry that has escaped scrutiny for so long is not enough, and is not in the best interest of the life sciences industry, nor the American public. The GPOs may appear to be adhering to the “letter” of your April 2002 request, but we fear that the “spirit” is still lacking in some.

Senators DeWine and Kohl, I am sure you are aware of the efforts of California State Senator Eschutia to bring forth legislation to adopt several uniform rules that GPOs had agreed to in their Code of Conduct, such as no sole source contracts, and no bundling of unrelated products. Yet the GPOs have lobbied hard against that legislation. This makes us wary.

We believe a more definitive Code of Conduct must be created that goes beyond the industry’s current version. And, it must be stringently enforced across the entire GPO industry. We would like to see reforms that are consistent with promoting and fostering healthy competition for all GPOs -- not only for those companies, like Premier, who have gone beyond the industry’s own Code of Conduct. Once implemented, newly launched best policies and practices must be monitored via clear benchmarks and disclosure requirements.

More definitive policy change is necessary to assure that the unintended consequences of the antitrust exemptions previously granted to GPOs are corrected. As long as the financial incentives exist for GPOs to benefit from selling restricted market access, they will continue to find ways to do it. Accordingly, if all that results from your hard work on this issue are voluntary reforms, we have little hope that any gains achieved thus far will last.

The venture capital community is committed to further investment in U.S. healthcare technology. We welcome open and competitive marketplaces, and we believe that competition has served the American public well by stimulating vast and meaningful technological innovation. The temptation for GPOs to return to their previously collusive and anticompetitive activities with larger medical companies (if indeed they have all truly shed them, which we doubt), threatens obvious benefits for the American public, not only in healthcare, but across the entire economy.

On behalf of the venture community, I would like to thank the Committee again for its diligent efforts in this area. We would strongly encourage the Committee to consider legislation to correct past abuses on the part of GPOs. In no other sector would abuses of this sort be tolerated, and healthcare should be no exception. In health care, reform is not just a matter of dollars and cents, but of life and death.