

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Timothy J. Muris, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

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In the Matter of)
) Docket No. C-_____
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CARLSBAD PHYSICIAN)
ASSOCIATION, INC.,)
a corporation,)
)
and)
)
WILLIAM J. BAGGS, M.D.,)
SRICHAND S. DARA, M.D.,)
GLEN MOORE,)
JAMES J. PURPURA, D.O.,)
DEBORAH J. SCHENCK, M.D.,)
CHARLES L. SECORA, M.D.,)
MAJID A. SYED, M.D.,)
and RICHARD L. ZIZZA, M.D.,)
individually.)
_____)

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of certain acts and practices of the Carlsbad Physician Association, Inc. (“CPA”), William J. Baggs, M.D., Srichand S. Dara, M.D., Glen Moore, James J. Purpura, D.O., Deborah J. Schenck, M.D., Charles L. Secora, M.D., Majid A. Syed, M.D., and Richard L. Zizza, M.D., hereinafter sometimes referred to as “Respondents,” and Respondents having been furnished thereafter with a copy of the draft of Complaint that the counsel for the Commission proposed to present to the Commission for its consideration and which, if issued, would charge Respondents with violations of Section 5 of the

Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order to Cease and Desist (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues the following Order:

1. Respondent CPA is a for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Mexico, with its principal address at 2420 West Pierce St., Suite 100, Carlsbad, NM 88220.
2. Respondent William J. Baggs, M.D., is the Member-at-Large of CPA’s Board of Directors, a former member of the Contract Committee, and one of the founders of CPA. His office and principal place of business is located at 2410 W. Pierce St., Carlsbad, NM 88220.
3. Respondent Srichand S. Dara, M.D., is an active member of CPA’s Contract Committee, a former Secretary of CPA, and a member of CPA’s initial Board of Directors. His office and principal place of business is located at 110 S. Halagueno, Carlsbad, NM 88220.
4. Respondent Glen Moore is the Executive Director of CPA. His principal address is P.O. Box 381, Benton, MS 39039.
5. Respondent James J. Purpura, D.O., is the immediate past President of CPA, its immediate past Secretary, and a member of its Contract Committee. His office and principal place of business is located at 2330 West Pierce St., Carlsbad, NM 88220.
6. Respondent Deborah J. Schenck, M.D., is a former Treasurer of CPA, and a current member of the Contract Committee. Her office and principal place of business is located at 2420 West Pierce St., Suite 103, Carlsbad, NM 88220.

7. Respondent Charles L. Secora, M.D., is a former Vice President and Secretary of CPA, a former Chairperson of the Contract Committee, and a former member of the Contract Committee. His office and principal place of business is located at 2402 West Pierce St., Suite 6F, Carlsbad, NM 88220.
8. Respondent Majid A. Syed, M.D., is the founding President of CPA, a former Chairperson of the Contract Committee, and a member of the Contract Committee. His office and principal place of business is located at 2402 West Pierce St., Suite 6D, Carlsbad, NM 88220.
9. Respondent Richard L. Zizza, M.D., is the President of CPA, and the Chairperson of the Contract Committee. His office and principal place of business is located at 2420 West Pierce St., Suite 100, Carlsbad, NM 88220.
10. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Respondent CPA” means Carlsbad Physician Association, Inc., its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by Carlsbad Physician Association, Inc., and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- B. “Respondent Moore” means Glen Moore.
- C. “Physician Respondents” means William J. Baggs, M.D., Srichand S. Dara, M.D., James J. Purpura, D.O., Deborah J. Schenck, M.D., Charles L. Secora, M.D., Majid A. Syed, M.D., and Richard L. Zizza, M.D.
- D. “Respondents” means Respondent CPA, Respondent Moore, and the Physician Respondents.
- E. “Medical group practice” means a bona fide, integrated firm in which physicians practice medicine together as partners, shareholders, owners, members, or employees, or in which only one physician practices medicine.
- F. “Participate” in an entity means (1) to be a partner, shareholder, owner, member, or employee

of such entity, or (2) to provide services, agree to provide services, or offer to provide services, to a payor through such entity. This definition also applies to all tenses and forms of the word “participate,” including, but not limited to, “participating,” “participated,” and “participation.”

- G. “Payor” means any person that pays, or arranges for the payment, for all or any part of any physician services for itself or for any other person. Payor includes any person that develops, leases, or sells access to networks of physicians.
- H. “Person” means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.
- I. “Physician” means a doctor of allopathic medicine (“M.D.”), a doctor of osteopathic medicine (“D.O.”), a doctor of chiropractic medicine (“D.C.”), or a doctor of podiatric medicine (“D.P.M.”).
- J. “Preexisting contract” means a contract that was in effect on the date of the receipt by a payor that is a party to such contract of notice sent by Respondent CPA, pursuant to Paragraph III.B.2.b. of this Order, of such payor’s right to terminate such contract.
- K. “Principal address” means either (1) primary business address, if there is a business address, or (2) primary residential address, if there is no business address.
- L. “Qualified clinically-integrated joint arrangement” means an arrangement to provide physician services in which:
 - 1. all physicians who participate in the arrangement participate in active and ongoing programs of the arrangement to evaluate and modify the practice patterns of, and create a high degree of interdependence and cooperation among, the physicians who participate in the arrangement, in order to control costs and ensure the quality of services provided through the arrangement; and
 - 2. any agreement concerning price or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies through the joint arrangement.
- M. “Qualified risk-sharing joint arrangement” means an arrangement to provide physician services in which:
 - 1. all physicians who participate in the arrangement share substantial financial risk through their participation in the arrangement and thereby create incentives for the physicians who participate jointly to control costs and improve quality by managing the provision

of physician services, such as risk-sharing involving:

- a. the provision of physician services to payors at a capitated rate,
 - b. the provision of physician services for a predetermined percentage of premium or revenue from payors,
 - c. the use of significant financial incentives (*e.g.*, substantial withholds) for physicians who participate to achieve, as a group, specified cost-containment goals, or
 - d. the provision of a complex or extended course of treatment that requires the substantial coordination of care by physicians in different specialties offering a complementary mix of services, for a fixed, predetermined price, where the costs of that course of treatment for any individual patient can vary greatly due to the individual patient's condition, the choice, complexity, or length of treatment, or other factors; and
2. any agreement concerning price or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies through the joint arrangement.

II.

IT IS FURTHER ORDERED that Respondents, directly or indirectly, or through any corporate or other device, in connection with the provision of physician services in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, cease and desist from:

- A. Entering into, adhering to, participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding between or among any physicians:
 1. To negotiate on behalf of any physician with any payor,
 2. To deal, refuse to deal, or threaten to refuse to deal with any payor,
 3. Regarding any term, condition, or requirement upon which any physician deals, or is willing to deal, with any payor, including, but not limited to, price terms, or
 4. Not to deal individually with any payor, or not to deal with any payor through any

arrangement other than Respondent CPA;

- B. Exchanging or facilitating in any manner the exchange or transfer of information among physicians concerning any physician's willingness to deal with a payor, or the terms or conditions, including price terms, on which the physician is willing to deal;
- C. Attempting to engage in any action prohibited by Paragraph II.A. or II.B., above;
- D. Encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any person to engage in any action that would be prohibited by Paragraphs II.A through II.C above; and
- E. For a period of three (3) years after the date this Order becomes final, acting as an intermediary or agent on behalf of any physicians, or using an intermediary or agent, who is also an intermediary or agent for any other physician, in dealing with health plans regarding contracts under which physicians would be compensated for the provision of services.

PROVIDED, HOWEVER, that nothing in this Paragraph II. shall prohibit any Respondent:

- (i) from engaging in any agreement or other conduct that is reasonably necessary to form, participate in, or take any action in furtherance of a qualified risk-sharing joint arrangement or qualified clinically-integrated joint arrangement, or that solely involves physicians in the same medical group practice; or
- (ii) from securing legal services that constitute the practice of law, as defined by the laws of the State of New Mexico.

III.

IT IS FURTHER ORDERED that Respondent CPA shall:

- A. Within thirty (30) days after the date on which this Order becomes final, cease and desist from all business and all other activities of any nature whatsoever, except those activities that are required in order to comply with the terms of this Order or that are necessary to effect a winding down of Respondent CPA's affairs and its dissolution;
- B. Within thirty (30) days after the date on which this Order becomes final, and prior to the dissolution provided for in Paragraph III.D. below:
 - 1. distribute by first-class mail, with delivery confirmation, a copy of this Order and the Complaint to each physician who participates, or has participated, in Respondent CPA;

2. distribute by first-class mail, return receipt requested, a copy of this Order and Complaint to:
 - a. each officer, director, manager, and employee of Respondent CPA;
 - b. the chief executive officer of each payor who, at any time since January 1, 1998, has communicated to Respondent CPA, or to whom Respondent CPA has communicated, with regard to any desire, willingness, or interest of such payor in contracting for physician services, and include in such mailing the notice specified in Appendix A to this Order; and
 - c. Carlsbad Medical Center, Carlsbad, New Mexico;
- C. Terminate, without penalty or charge, and in compliance with any applicable laws of the State of New Mexico, any preexisting contract with any payor for the provision of physician services, at the earlier of: (1) the termination or renewal date (including any automatic renewal date) of such contract; or (2) receipt by Respondent CPA of a written request to terminate such contract from any payor that is a party to the contract; and
- D. Dissolve itself within thirty (30) days after the termination or renewal date (including any automatic renewal date) of the last preexisting contract entered into with any payor, as provided for in Paragraph III.C.

IV.

IT IS FURTHER ORDERED that, if Respondent CPA fails to comply with all or any portion of Paragraph III.B. of this Order within sixty (60) days after the date on which this Order becomes final, then Respondent Moore shall, within ninety (90) days after the date on which this Order becomes final, comply with those portions of Paragraph III.B. of this Order with which Respondent CPA did not comply.

V.

IT IS FURTHER ORDERED that Respondent CPA shall:

- A. Within ninety (90) days after the date on which this Order becomes final, and prior to the dissolution provided for in Paragraph III.D. above, file with the Commission a verified written report demonstrating how it has complied and is complying with this Order;
- B. Prior to its dissolution, notify the Commission at least thirty (30) days prior to any proposed change in Respondent CPA, such as assignment, sale resulting in the emergence of a successor,

or any other change in Respondent CPA that may affect compliance obligations arising out of this Order; and

- C. Upon dissolution, provide the Commission with evidence of that dissolution.

VI.

IT IS FURTHER ORDERED that Respondent Moore shall file verified written reports within sixty (60) days after the date this Order becomes final, annually thereafter for three (3) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may by written notice require, setting forth:

- A. in detail, the manner and form in which Respondent Moore has complied and is complying with this Order;
- B. the name, address, and telephone number of each physician, medical group practice, and other group of physicians that Respondent Moore has represented or advised with respect to their dealings with any payor in connection with the provision of physician services;
- C. the name, address, and telephone number of each payor with which Respondent Moore has dealt while representing any physician, medical group practice, or other group of physicians in connection with the provision of physician services;
- D. any actions taken in furtherance of a qualified risk-sharing joint arrangement or qualified clinically-integrated joint arrangement provided for in Paragraph II of this Order; and
- E. any arrangement under which Respondent Moore would act as an intermediary or agent on behalf of any physicians with health plans regarding contracts under which physicians would be compensated for the provision of services, subject to Paragraph II.E. of this Order.

VII.

IT IS FURTHER ORDERED that each Physician Respondent shall file verified written reports within sixty (60) days after the date this Order becomes final, annually thereafter for three (3) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may by written notice require, setting forth:

- A. in detail, the manner and form in which the Physician Respondent has complied and is complying with this Order, including, but not limited to, any information necessary to demonstrate such compliance;

- B. the name, address, and telephone number of each physician group, including any medical group practice, in which the Physician Respondent has participated;
- C. the name, address, and telephone number of each person, who is not a member or employee of the Physician Respondent's medical group practice, that has represented or advised the Physician Respondent with respect to contracting with any payor for the provision of physician services;
- D. the name, address, and telephone number of each payor, other than individual patients, that has communicated with the Physician Respondent for the purpose of contracting, or seeking to contract, for physician services;
- E. the name, address, and telephone number of each payor, other than individual patients, with which the Physician Respondent has entered into a written agreement for the provision of physician services, and the nature of such agreement;
- F. any actions taken in furtherance of a qualified risk-sharing joint arrangement or qualified clinically-integrated joint arrangement provided for in Paragraph II of this Order; and
- G. any arrangement under which any Physician Respondent would act as an intermediary or agent on behalf of any physicians with health plans regarding contracts under which physicians would be compensated for the provision of services, subject to Paragraph II.E. of this Order.

VIII.

IT IS FURTHER ORDERED that each Respondent shall notify the Commission of any change in his, her, or its respective principal address within twenty (20) days of such change in address.

IX.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, each Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, calendars, and other records and documents in its possession, or under its control, relating to any matter contained in this Order; and
- B. Upon five (5) days' notice to such Respondent, and in the presence of counsel, and without restraint or interference from it, to interview such Respondent or employees of such Respondent.

X.

IT IS FURTHER ORDERED that this Order shall terminate twenty (20) years from the date it is issued.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: