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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
Orson Swindle
Thomas B. Leary
Pamela Jones Harbour
Jon Leibowitz

In the Matter of	
	Docket No. C-4142
SAN JUAN IPA, INC.,	
a corporation.	

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that San Juan IPA, Inc. ("Respondent"), has violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges in that respect as follows:

Nature of the Case

1. This matter concerns horizontal agreements among competing physicians in the Farmington, New Mexico, area to fix prices charged to health care plans and other third-party payors ("payors"), and to refuse to deal with payors except on collectively agreed terms. These physicians, who constitute most of the physicians in the Farmington area, orchestrated their price-fixing agreements and joint refusals to deal through Respondent.

Respondent

2. Respondent is a not-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 2325 East 30th Street, Farmington, NM 87401.

The FTC Has Jurisdiction over Respondent

3. At all times relevant to this Complaint, Respondent has been engaged in the business of contracting with payors, on behalf of Respondent's members, for the provision of physician services to persons for a fee.

4. Except to the extent that competition has been restrained as alleged herein, Respondent's physician members have been, and are now, in competition with each other for the provision of physician services in the Farmington, New Mexico, area to persons for a fee.

5. Respondent was founded by, is controlled by, and carries on business for the pecuniary benefit of its physician members. Accordingly, Respondent is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

6. Respondent's general business practices, including the acts and practices herein alleged, are in or affecting "commerce" as defined in the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

Overview of Market and Physician Competition

7. Farmington is located in San Juan County, in northwestern New Mexico. The closest major cities to Farmington are Albuquerque, the largest city in New Mexico, 181 miles to the southeast; and Santa Fe, the state capital and second largest city in the state, 205 miles to the southeast.

8. Respondent is an independent physician association ("IPA") with approximately 120 physician members, all of whom are licensed to practice allopathic or osteopathic medicine in the State of New Mexico.

9. To be marketable in the Farmington area, a payor's health insurance plan must include in its physician network a large number of primary care and specialist physicians who practice in that area. Members of Respondent account for approximately 80% of the physicians who independently practice in the Farmington area.

10. Physicians contract with payors to establish the terms and conditions, including price terms, under which they render services to the subscribers to the payors' health insurance plans ("insureds"). Physicians entering into such contracts often agree to lower compensation to obtain access to additional patients made available by the payors' relationship with insureds. These contracts may reduce payors' costs and enable them to reduce the price of insurance, and thereby result in lower medical care costs for insureds. Competing physicians, absent agreements among them on the terms, including price, on which they will provide services to insureds, decide individually whether to enter into payor contracts to provide services to insureds, and what prices they will accept pursuant to such contracts.

11. Competing physicians sometimes use a "messenger" to facilitate their contracting with payors in ways that do not constitute an unlawful agreement on prices and other competitively significant terms. Legitimate messenger arrangements can reduce contracting costs between payors and physicians. A messenger can be an efficient conduit to which a payor submits a contract offer, with the understanding that the messenger will transmit that offer to a group of physicians and inform the payor how many physicians across specialties accept the offer or have a counteroffer. At less cost, payors can thus discern physician willingness to contract at particular prices, and assemble networks, while physicians can market themselves to payors and assess contracting opportunities. A messenger may not negotiate prices or other competitively significant terms, however, and may not facilitate coordination among physicians on their responses to contract offers.

Overview of Respondent's Contracting on behalf of Its Physician Members

12. Payors and physicians in the Farmington area agree on physician compensation by using either a percentage discount from the physician's full billed charges, or a fixed percentage of the Medicare Resource Based Relative Value Scale ("RBRVS"). RBRVS is a system used by the Centers for Medicare and Medicaid Services to determine the amount to pay physicians for the services they render to Medicare patients. Several payors in the Farmington area make contract offers to individual physicians or groups at a price level specified as some percentage of the RBRVS fee for a particular year (*e.g.,* "110% of 2004 RBRVS"). Payors often prefer this method of determining price to discounts off full billed charges, because the former method allows payors to know exactly the price they will pay physicians. Contracts that determine price based on a discount off billed charges, in contrast, allow physicians unilaterally to increase their billed charges.

13. Respondent was incorporated in 1986 to help its physician members determine whether to participate in payor contracts. Respondent's physician members participate in Respondent's payor contracts by signing a "Membership Agreement" that requires physician signatories to accept fee schedules specified in the contracts that Respondent signs with payors. Payor contracts include fee schedules that apply to the entire membership. The fee schedules contain either all set prices, all discounts off full billed charges, or both such pricing methods, which vary by physician service.

14. Respondent's physician members agreed to refuse offers payors made to them individually and to demand that payors deal for physician services solely with Respondent – thereby hindering payors' efforts to establish competitive physician networks in the Farmington area. Due to Respondent's large share of Farmington-area physicians, payors have repeatedly acceded to Respondent's price demands for all of its physician members.

Respondent Fixed Prices by Demanding a Set Discount Off Billed Charges

15. From 1998 until 2001, Respondent was a one-third owner in a joint venture called Lifecourse Management Services ("LMS"). LMS designated certain seats on its Board of Directors specifically for Respondent's members. LMS had a Contracts Committee, half of whose members were Respondent's representatives. This committee adopted a policy of demanding payment from payors for physician services at full billed charges less a fixed 10% discount, and refusing to contract with payors that did not meet LMS's demand. LMS contracted with payors under this policy until LMS dissolved in July 2001. Respondent estimated that these contracts increased physician prices by a range of 10% to 62%.

16. Since July 2001, Respondent maintained at least three such pre-existing LMS contracts – all of which automatically renewed every year.

17. After LMS dissolved, Respondent signed contracts with at least nine payors. As to each contract, Respondent adopted LMS's pricing policy. It successfully bargained on its members behalf for full billed charges less a fixed 10% discount. These contracts automatically renewed every year. Respondent's negotiations with Admar Corporation ("Admar") and Southwest HeathNet, Inc. ("Southwest") exemplify Respondent's tactic of joint price-setting.

18. In January 2001, LMS demanded that Admar, a preferred provider organization, pay LMS's physician members at full billed charges less 10%. The following month, while LMS and Respondent were preparing for LMS's dissolution, Admar offered individual physician members of Respondent a contract with prices at 145% of RBRVS for medicine and surgery codes. Respondent's Executive Director instructed its physician members to disregard Admar's direct contract proposals, because Respondent was in the process of negotiating a contract with Admar. Admar was thereafter unable to contract directly with any of Respondent's physician members, increasing the pressure on Admar to contract with Respondent. In September 2001, Admar agreed to pay Respondent's physician members at full billed charges less 10%.

19. Southwest is a physician-hospital organization in Cortez, Colorado. In early 2001, Southwest contacted LMS, seeking to gain access to Respondent's physician members in the Farmington, New Mexico area, for payors with which Southwest had contracts. LMS insisted that the payors dealing with Southwest could have access to Respondent's members only by agreeing to pay them their full billed charges less 10%. After LMS dissolved, Southwest dealt directly with Respondent, which adopted LMS's bargaining position and was successful in negotiating contracts with Southwest's payors on these terms. Respondent estimated that these contracts increased prices for its member physicians by as much as 60%.

Respondent Also Negotiated Other Fixed-Price Payor Contracts

20. During its negotiations with other payors, including Blue Cross & Blue Shield of New Mexico ("Blue Cross") and Molina Healthcare of New Mexico ("Molina") (formerly known as Cimarron Health Plan), Respondent purported to be a legitimate messenger, but did not act accordingly. Instead, Respondent coordinated its physician members' responses to these payors' price offers, by not transmitting certain offers to its physician members for their unilateral consideration and demanding prices from these payors on the collective behalf of its physician members.

21. In May 2001, Blue Cross made a price offer to Respondent for transmission to its members. Respondent did not transmit this offer to its physician members. Instead, in August 2001, Respondent demanded from Blue Cross, on behalf of its physician members, prices for non-surgical codes that were approximately 17% to 19% higher than Blue Cross's offer. Later that month, Blue Cross increased its price offer to Respondent's physician members by 2% to 14% more than the initial Blue Cross offer. Respondent again did not transmit this offer to its physician members. In October 2001, Blue Cross again increased its offer to Respondent's physician members, to prices ranging from 10% to 16% higher than the initial Blue Cross offer. Only at that point did Respondent transmit this offer to its physician members, who accepted it.

22. Throughout 2002, Molina attempted to contract directly with individual physician members of Respondent for its commercial product. Virtually every member of Respondent insisted on contracting with Molina only through Respondent, however, and rejected Molina's direct contract proposals. In January 2003, Molina proposed 140% of RBRVS to Respondent for all physician services. Respondent did not transmit this proposal to its physician members, and, without having asked its members for their individual price terms, told Molina that the physicians would require higher prices for surgical codes. In March 2003, Molina increased its price offer by more than 10% over its initial proposal for surgical codes, and Respondent transmitted this offer to its physician members – the majority of whom refused it. Molina requested the names of the minority of physicians who indicated their willingness to accept Molina's price terms, but Respondent refused to comply – thus bolstering the group's collective leverage by stifling Molina's ability to enter individual with certain members. To date, Molina has not entered into a commercial contract with the Respondent, and as a result Molina has been unable to obtain a viable network of physicians in the Farmington area for its commercial product.

Respondent's Price Fixing Is Not Justified

23. Respondent's joint negotiation of fees has not been, and is not, reasonably related to any efficiency-enhancing integration.

Respondent's Actions Have Had Substantial Anticompetitive Effects

24. Respondent's actions described in Paragraphs 13 through 22 of this Complaint have had, or tend to have, the effect of restraining trade unreasonably and hindering competition in the provision of physician services in the Farmington area in the following ways, among others:

a. price and other forms of competition among Respondent's members were unreasonably restrained;

b. prices for physician services were increased; and

c. health plans, employers, and individual consumers were deprived of the benefits of competition among physicians.

Respondent's Conduct Constitutes a Violation of the Federal Trade Commission Act

25. The combination, conspiracy, acts, and practices described above constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. Such combination, conspiracy, acts, and practices, or the effects thereof, are continuing and will continue or recur in the absence of the relief herein requested.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this thirtieth day of June, 2005, issues its Complaint against Respondent.

By the Commission, Chairman Majoras not participating.

Donald S. Clark
Secretary

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