

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-
WHITE SANDS HEALTH CARE)	
SYSTEM, L.L.C.,)	
a limited liability company,)	
)	
ALAMOGORDO PHYSICIANS’)	
COOPERATIVE, INC.,)	
)	
a cooperative association,)	
)	
DACITE, INC.,)	
a corporation,)	
)	
and)	
)	
JAMES R. LAURENZA,)	
individually.)	
_____)	

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 White Sands Health Care System, L.L.C. (“White Sands”), Alamogordo Physicians’ Cooperative, Inc. (“Alamogordo Physicians”), Dacite, Inc. (“Dacite”), and James R. Laurenza, hereinafter referred to as “Respondents,” have 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 health care providers in the Alamogordo, 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 upon terms. These health care providers, who constitute most of the health care providers in the Alamogordo area, orchestrated these price-fixing agreements and refusals to deal through the respondents. The respondents’ conduct raised the price of health care services in the Alamogordo area.

RESPONDENTS

2. White Sands, a physician-hospital organization (“PHO”), is a for-profit limited liability company, organized, existing, and doing business under and by virtue of the laws of the State of New Mexico, with its principal address at 3310 N. White Sands Boulevard, Alamogordo, NM 88311. White Sands was formed in 1996, and consists of a non-profit hospital, Gerald Champion Regional Medical Center; Alamogordo Physicians, which is an independent practice association (“IPA”); and 31 non-physician licensed health care professionals, five of which are certified registered nurse anesthetists (“nurse anesthetists”).

3. Alamogordo Physicians, an IPA consisting of 45 physicians in Alamogordo and other locations in Otero County, New Mexico, is a cooperative association, incorporated, organized, existing, and doing business under and by virtue of the laws of the State of New Mexico, with its principal address at P.O. Box 309, Alamogordo, NM 88310.

4. Dacite is a for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Wyoming, with its principal address at 106 Sweetbriar Lane, Louisville, KY 40207. Dacite provides consulting services, including managed care contracting, to White Sands.

5. James R. Laurenza is Dacite’s founder and President, White Sands’ General Manager, and White Sands’ principal contract negotiator with payors. His principal address is 106 Sweetbriar Lane, Louisville, KY 40207.

THE FTC HAS JURISDICTION OVER RESPONDENTS

6. At all times relevant to this Complaint, White Sands, Dacite, and James R. Laurenza have been engaged in the business of contracting with payors, on behalf of White Sands’ members, for the provision of medical services to persons for a fee.

7. Except to the extent that competition has been restrained as alleged herein, White Sands’ nurse anesthetist members have been, and are now, in competition with each other for the provision of health care services in the Alamogordo area for a fee. Additionally, except to the extent that competition has been restrained as alleged herein, Alamogordo Physicians’ physician members have been, and are now, in competition with each other for the provision of medical

services in the Alamogordo area for a fee.

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

9. Respondents' 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 PHYSICIAN AND NURSE ANESTHETIST CONTRACTING WITH PAYORS

10. Alamogordo is in south-central New Mexico. The closest major cities to Alamogordo are Las Cruces, New Mexico, approximately 70 miles to the south; El Paso, Texas, approximately 90 miles to the south; Albuquerque, the largest city in New Mexico, is approximately 210 miles to the north.

11. White Sands' nurse anesthetist members are licensed in the State of New Mexico as anesthesia specialists, and comprise all of the nurse anesthetists practicing in the Alamogordo area. All of White Sands' nurse anesthetist members operate their own independent practices. There are no physician anesthesiologists in the Alamogordo area. Therefore, to be marketable in the Alamogordo area, a payor's health insurance plan must have access to White Sands' nurse anesthetist members.

12. Alamogordo Physicians' physician members are licensed to practice allopathic or osteopathic medicine in the State of New Mexico, and engaged in the business of providing physician services to patients in the Alamogordo area. In addition, all of Alamogordo Physicians' physician members are members of White Sands and account for approximately 80% of the physicians who independently practice in the Alamogordo area. To be marketable in the Alamogordo area, a payor's health insurance plan must have access to a large number of primary care physicians and specialists who are members of White Sands.

13. Physicians and nurse anesthetists contract with payors to establish the terms and conditions, including price terms, under which they render services to the payors' subscribers. Physicians and nurse anesthetists 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 lower the price of insurance, and thereby result in lower medical care costs for subscribers to the payors' health insurance plans. Absent agreements among them on the terms, including price, on which they will provide services to enrollees in payors' health care plans, competing physicians and competing nurse anesthetists decide individually whether to enter into payor contracts to provide services to their subscribers or enrollees, and what prices they will accept pursuant to such

contracts.

14. The Medicare Resource Based Relative Value Scale (“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. In general, payors in the Alamogordo 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 2003 RBRVS”).

15. Contracts between payors and nurse anesthetists contain payment provisions based on procedure guidelines established by the American Society of Anesthesiologists (“ASA”). Under these guidelines, payment for most procedures is determined by multiplying an agreed upon dollar amount, or “conversion factor,” by the sum of “ASA units.” ASA units are divided into “procedure units” and “time units.” The number of procedure units varies, depending on the type of procedure that the nurse anesthetist provides. One time unit is equal to fifteen minutes. For example, if a payor and nurse anesthetist agree to a conversion factor of \$40, and a procedure is worth six procedure units and takes 45 minutes (*i.e.*, 3 time units) to perform, then the payment is \$360 [$\$40 \times (6 + 3) = \360]. Payors in New Mexico negotiate the conversion factor with nurse anesthetists for the provision of anesthesia. For procedures related to pain management, payment mirrors the RBRVS approach described in paragraph 14 above.

WHITE SANDS NEGOTIATED PAYOR CONTRACTS ON BEHALF OF ITS MEMBER PHYSICIANS AND NURSE ANESTHETISTS

16. Gerald Champion Regional Medical Center and Alamogordo Physicians organized White Sands in 1996 to “develop pricing policies and . . . negotiate and enter into Managed Care Contracts” on behalf of its members. Its business plan promotes the PHO as “enabl[ing] . . . physicians to be part of a delivery structure that will leverage the collective power of the members in obtaining more favorable reimbursement rates than could be negotiated . . . individually.” White Sands’ Board of Directors approves all contracts with payors on behalf of all White Sands’ members.

17. Alamogordo Physicians was incorporated in 1996 “to represent and advance the interests of independent physicians practicing in Otero County, New Mexico . . . and to participate effectively in managed care programs.” Alamogordo Physicians’ Board of Directors develops “contracting guidelines” for Mr. Laurenza to use in making demands to payors on price and other contracting terms for physician services. The Alamogordo Physicians Board must “fully support” a contract’s price and other terms as they relate to physician services, before Mr. Laurenza submits the contract to White Sands’ Board for final approval. The Alamogordo Physicians Board has authority to expel physician members from Alamogordo Physicians if they refuse to participate in Board-approved payor contracts.

18. Physician members of Alamogordo Physicians are eligible to be members of White Sands and can participate in White Sands’ payor contracts by entering into a “Physician

Provider Agreement” with White Sands. Under the “Physician Provider Agreement,” a physician member of White Sands is automatically bound to a single-signature payor contract, signed by White Sands’ General Manager, if the contract’s prices meet the “guideline fee schedule then in force for White Sands,” and if the General Manager of White Sands and White Sands’ Board approve the contract. Nurse anesthetists can become eligible members of White Sands and participate in White Sands’ single-signature payor contracts by signing a “Professional Provider Agreement.” White Sands’ payor contracts include a uniform fee schedule that applies to the entire membership.

19. Through Dacite, Mr. Laurenza – White Sands’ General Manager – has provided contracting and consulting services to White Sands since White Sands’ inception in 1996. Mr. Laurenza negotiates with payors on prices and other contract terms pursuant to which White Sands’ physician and nurse anesthetist members will provide services to subscribers of the payors’ health plans. He reports to both Alamogordo Physicians and the White Sands Board on developments in payor negotiations. White Sands compensates Mr. Laurenza with a daily consulting rate, along with a fee for each payor contract that he negotiates for White Sands. The greater the number of a payor’s enrollees, the greater the fee. Mr. Laurenza strongly influences White Sands’ contracting decisions. He advises the Boards of both White Sands and Alamogordo Physicians on what prices they should accept. Both groups generally agree with his recommendations.

20. White Sands’ physician and nurse anesthetist members have agreed with each other and with White Sands not to deal individually, or through any other organization besides White Sands, with any payor with which White Sands was attempting to negotiate a contract jointly on behalf of White Sands’ members. Physician and nurse anesthetist members, at Mr. Laurenza’s urging, refuse payor offers made to them individually, hindering payors’ efforts to establish competitive physician and nurse anesthetist networks in the Alamogordo area. Due to White Sands’ large share of Alamogordo-area physicians and nurse anesthetists, payors have repeatedly acceded to respondents’ price demands for all physician and nurse anesthetist members. One payor determined that the Alamogordo area is “the most expensive location in New Mexico . . . to conduct business,” due to White Sands’ prices.

CIMARRON HEALTH PLAN

21. Cimarron Health Plan (“Cimarron”) is a payor doing business in the Alamogordo area. In October 2000, Mr. Laurenza demanded substantial price increases from Cimarron for physician services on surgical procedures and for nurse anesthetist services regarding its HMO product, on behalf of White Sands’ members. At the time, the contract prices were 123% of 2000 RBRVS and \$40 per ASA unit for anesthesia, respectively. In June 2001, following months of negotiations with Mr. Laurenza, Cimarron finally accepted his demand for a price increase for physician services on surgical procedures, to 140% of 2001 RBRVS. Months later, Cimarron accepted Mr. Laurenza’s demand for price increases for nurse anesthetist services, agreeing to pay nurse anesthetists a 16% increase to the conversion factor for anesthesia, and a 14% increase for pain management.

22. In September 2002, Mr. Laurenza demanded further price increases for physician services under Cimarron's HMO product. He demanded prices ranging between 160% and 180% of 2001 RBRVS, as high as 28% to 30% over the previously increased prices. In November 2002, Mr. Laurenza modified his price demands for physician services, to prices ranging from 152% to 170% of 2001 RBRVS. In April 2003, Cimarron agreed to these prices. By April 2003, Cimarron also agreed to Mr. Laurenza's demand for a 5% increase to the conversion factor for anesthesia, and a 6% increase to the price for pain management. During those most recent negotiations, Mr. Laurenza advised physician members on how to refuse Cimarron proposals for individual contracts without appearing to engage in joint conduct.

BLUE CROSS & BLUE SHIELD

23. Blue Cross & Blue Shield of New Mexico ("Blue Cross") is a health plan doing business in the Alamogordo area. Blue Cross first entered into a non-risk contract with White Sands in November 2000.

24. In a September 2002 letter to Blue Cross, Mr. Laurenza demanded price increases for White Sands' physicians, ranging from 11% to 24%. At that time, the contracted prices for physician services under White Sands' contract with Blue Cross ranged between 129% and 162% of 2001 RBRVS. After Blue Cross refused this demand, Mr. Laurenza sent Blue Cross a November 2002 letter of termination on behalf of White Sands' physician members, stating that White Sands' physician members would "reconsider" their joint termination if Blue Cross would meet their price demands.

25. Mr. Laurenza advised White Sands' members not to deal individually with Blue Cross, in order to secure greater bargaining leverage and higher prices through the collective power of the group. In a December 2002 letter to White Sands' physician members, Mr. Laurenza warned that individual contracting with Blue Cross would "cause a competitive reaction among providers that would lead to lower reimbursement for all involved." In February 2003, following repeated refusals by White Sands' physician members to deal with it outside of White Sands, Blue Cross agreed to increases in price for various procedures, to a range of 143% to 171% of 2003 RBRVS.

26. Mr. Laurenza also demanded substantial price increases from Blue Cross for White Sands' nurse anesthetist members. Under White Sands' November 2000 contract with Blue Cross, the price for nurse anesthetist services was \$47 per ASA unit for anesthesia, and 153% of 2001 RBRVS for pain management. In August 2001, Mr. Laurenza called for an 11% increase in the anesthesia conversion factor, and a 20% increase in the price for pain management. Blue Cross met Mr. Laurenza's price demand on pain management but counter-offered a conversion factor for anesthesia below Mr. Laurenza's demand. Mr. Laurenza rejected the counter-offer. Having no viable alternative for anesthesia specialists in the area, Blue Cross responded by increasing the conversion factor for anesthesia by 8%, and Mr. Laurenza accepted that term.

PRESBYTERIAN HEALTH PLAN

27. Presbyterian Health Plan, Inc. (“Presbyterian”), is a health plan doing business in the Alamogordo area. White Sands first entered into a single-signature contract with Presbyterian in 1996 that included agreed upon prices for physicians and nurse anesthetists. In November 2001, Mr. Laurenza initiated renegotiation of the contracted prices with Presbyterian, threatening to terminate the contract on behalf of White Sands’ physician members if Presbyterian did not increase its prices. In January 2002, the Alamogordo Physicians Board voted to demand higher prices from Presbyterian, ranging between 155% and 195% of 2001 RBRVS.

28. In a February 2002 letter to Presbyterian, Mr. Laurenza demanded increases in payment for physician services to prices between 170% and 195% of 2001 RBRVS for various procedural codes. In June 2002, Presbyterian and White Sands agreed to prices for physician services ranging from 160% to 180% of 2001 RBRVS, depending on the code, a range that was pre-approved by the Alamogordo Physicians Board.

29. In May 2003, Mr. Laurenza, on behalf of White Sands’ nurse anesthetists, demanded a 18% price increase for anesthesia, to \$53 per ASA unit. At the time, the contracted price was \$45 per ASA unit. On the same day that he made his demand to Presbyterian, Mr. Laurenza sent the nurse anesthetists questionnaires to survey their support for his demand for a price increase. The questionnaires were designed to coordinate the nurse anesthetists’ joint support for Mr. Laurenza’s price increase demand. Presbyterian rejected Mr. Laurenza’s demand for price increases, and requested that they remain contracted under the same prices.

30. In June 2003, Mr. Laurenza increased his price demand for nurse anesthetists to \$60 per ASA unit. Presbyterian refused and counter-proposed \$48 per ASA unit. Mr. Laurenza warned Presbyterian that the nurse anesthetists would reject the counter-proposal, which a majority of them did. Presbyterian and White Sands did not reach an agreement on prices for nurse anesthetists, forcing Presbyterian to pay the White Sands nurse anesthetists unpredictable and high billed charges for anesthesia services in the Alamogordo area.

LOVELACE SANDIA HEALTH PLAN

31. Lovelace Sandia Health Plan (“Lovelace”) contracts with White Sands for health care services in the Alamogordo area. White Sands, through Mr. Laurenza, has successfully negotiated with Lovelace for high uniform prices on behalf of its competing members.

32. In August 2001, Mr. Laurenza sent Lovelace a letter demanding substantial price increases for White Sands’ physicians and nurse anesthetists. He requested prices ranging from 160% to 180% of current year RBRVS for physician services, and a \$50 conversion factor for anesthesia. At the time, White Sands was contracted with Lovelace under prices for physician services ranging between 150% and 165% of current year RBRVS. The conversion factor for anesthesia was \$47 per ASA unit, already 30% higher than the standard rate Lovelace paid for

anesthesia elsewhere. One month later, Mr. Laurenza threatened to terminate the contract with Lovelace on behalf of White Sands if the parties did not come to an agreement on price and other terms. By November 2001, Lovelace agreed to meet White Sands' initial demand for anesthesia, and to increase prices for physician services to prices ranging from 155% to 175%.

OTHER PAYORS

33. White Sands has orchestrated collective negotiations with other payors who do business, or attempted to do business, in the Alamogordo area, on behalf of its physician and nurse anesthetist members. Mr. Laurenza, with the assistance of both the White Sands and Alamogordo Physicians Boards, negotiated with these payors on price, making proposals and counter-proposals, as well as accepting or rejecting offers without transmitting them to members for their individual acceptance or rejection, and facilitating collective refusals to deal and threats of refusals to deal with payors. White Sands' members collectively accepted or rejected these payor contracts, and refused to deal with these payors individually. These coercive tactics, due to White Sands' dominant market position in the Alamogordo area, have been highly successful.

RESPONDENTS' PRICE-FIXING IS NOT JUSTIFIED

34. Respondents' joint negotiation of fees and other competitively significant contract terms has not been, and is not, reasonably related to any efficiency-enhancing integration.

RESPONDENTS' ACTIONS HAVE HAD SUBSTANTIAL ANTICOMPETITIVE EFFECTS

35. Respondents' actions described in Paragraphs 16 through 33 of this Complaint have had, or tend to have, the effect of restraining trade unreasonably and hindering competition in the provision of physician and nurse anesthetist services in the Alamogordo area in the following ways, among others:

1. price and other forms of competition among members of White Sands and Alamogordo Physicians were unreasonably restrained;
2. prices for physician and nurse anesthetist services were increased; and
3. health plans, employers, and individual consumers were deprived of the benefits of competition among physicians and among nurse anesthetists.

VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

36. 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 _____ day of _____, 2004, issues its Complaint against Respondents White Sands, Alamogordo Physicians, Dacite, and James R. Laurenza.

By the Commission.

Donald S. Clark
Secretary

SEAL