

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
Pamela Jones Harbour
William E. Kovacic
J. Thomas Rosb

In the Matter of)
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)

JURISDICTION

3. Respondent is organized for the purpose, among others, of serving the interest of its members. Respondent exists and operates, and at all times relevant to this Complaint has existed and operated, in substantial part for the pecuniary benefit of its physician members.

4. Respondent is a "corporation" within the meaning of Section 4 of the Federal Trade Commission Act.

5. At all times relevant to the Complaint, Respondent has been engaged in the business of contracting with payers, on behalf of its physician members, for the provision of physician services to persons for a fee.

6. Except to the extent that competition has been restrained as alleged herein, Respondent's physician members have been, and are now, in competition with one another for the provision of physician services in the Garfield County area.

7. The general business practices of Respondent and its physician members, including the acts and practices herein alleged, affect the interstate movement of patients, the interstate purchase of supplies and products, and the interstate flow of funds, and are in or affecting "commerce" as defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

OVERVIEW OF PHYSICIAN CONTRACTING WITH PAYERS

8. Respondent is a type of organization commonly referred to in the health care industry as an "independent practice association" because its members consist of independent physicians in solo and small group practices.

9. Physicians often contract with health plans and other third-party payers ("payers") to establish the terms and conditions, including price and price-related terms, under which they render physician services to the payers' enrollees. Physicians entering into such contracts often agree to lower compensation to obtain access to additional patients made available by the payers' relationships with enrollees. These contracts may reduce payers' costs and enable them to lower the price of insurance, and thereby result in lower medical-care costs for enrollees.

10. Absent agreements among competing physicians on the prices and terms at which they will provide services to payers' enrollees, competing physicians decide unilaterally whether to participate in the payers' provider networks based on the price and other terms and conditions offered by the payers.

11. To be marketable and competitive in the Garfield County area, a payer's health plan must include in its physician network a large number of primary care and specialist physicians offering services to customers in a sufficient number of practice fields at convenient

or accessible locations and at affordable prices. Because a substantial number of the primary care and specialist physicians who practice in the Garfield County area are members of Respondent, payers doing business in the Garfield County area have

17. Respondent presented itself to some prospective members as the "group which does the bargaining" with payers on the Best Practices that they should include in their proposed contracts.

RESPONDENT, WITH ITS MEMBERS, ENGAGED IN
CONCERTED REFUSALS TO DEAL

18. In order to collectively maintain and increase rates, Respondent's members agreed to refuse and refused to enter into individual contracts with payers. The payers with whom Respondent's members refused to deal included, but were not limited to, United Healthcare, CIGNA, Government Employees Hospital Association, Inc., Humana, Inc., and Anthem Blue Cross and Blue Shield. When approached by payers asking them to sign individual contracts, members often referred the payers to Respondent for contracting. For example, one member told Respondent that the payers "contract agreements are filed in the local landfill. We will wait for them to go back to the PA." the

24. Respondent also ~~forced~~ the concerted refusals to deal with payers except on its collectively agreed-upon terms by repeatedly reminding members in newsletters and other documents that Medicare-based rates banned by the Bona Fide Offer Criteria would lead to declining reimbursement, and that Respondent's role was to "keep [members] informed of best practices," and the extent to which payers used its Best Practices in their contracts.

RESPONDENT COORDINATEDnd

RESPONDENT'S ACTIONS HAVE HAD SUBSTANTIAL
ANTICOMPETITIVE EFFECTS

30. Respondent's actions have had, or tend to have had, the effect of unrea