

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FEDERAL TRADE COMMISSION,
600 Pennsylvania Avenue, NW
Washington, DC 20580

Plaintiff,

v.

SAN JUAN IPA, INC.
110 East Apache Street
Farmington, New Mexico 87401

Defendant.

Civil Action No.

**COMPLAINT FOR CIVIL
PENALTIES, PERMANENT
INJUNCTION, AND OTHER
RELIEF**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), for its008 Tc 0.ION, 0.IiTj2.75 o 87

terms with a payor on behalf of physician members for physician services and may not facilitate coordination among physicians on their responses to offers from payors.

PRIOR COMMISSION PROCEEDING

9. On June 30, 2005, following an investigation by FTC staff, the Commission determined that San Juan did not engage in a legal messenger model with participating physicians in violation of Section 5 of the FTC Act, 15 U.S.C. § 45. The Commission determined that San Juan orchestrated and implemented agreements with physician members of San Juan to fix prices and other terms on which they would deal with health plans, and to refuse to deal with such health plans except on collectively-determined terms.

10. Prior to issuance of the FTC Complaint Docket No. C-4142, San Juan and the Commission agreed to settle the matter. Accordingly, the Commission simultaneously issued the

- b. To deal, refuse to deal, or threaten to ~~sefto~~ deal with any payor in violation of Paragraph II.A.2. of the FTC Order; and
 - c. Regarding any term, condition, or requirement upon ~~whic~~ which physician deals, or is willing to deal, with any payor in violation of Paragraph II.A.3. of the FTC Order.
17. San Juan's conduct described in Paragraph 15 above constituted:
- a. An attempt to engage in conduct prohibited by Paragraph II.A.4. in violation of Paragraph II.C. of the FTC Order; and
 - b. Encouragement to induce any person ~~ortg~~ engage in any action that would be prohibited by Paragraph II.A.4 in violation of Paragraph II.D. of the FTC Order.

CIVIL PENALTIES AND OTHER RELIEF

18. Section 5(l) of the FTC Act, 15 U.S.C. § 45 (as modified by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74, § 701 (further amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note), and Federal Trade Commission Rule 1.98, 16 C.F.R. § 1.98, 87 FR 1070 (Jan. 10, 2022), authorizes the Court to award civil penalties of up to \$46,517 for each violation, or each day of a continuing violation, of a consent order entered by the Commission.

19. Under Section 5(x) of the FTC Act, 15 U.S.C. § 45(

a.

Exhibit A

[Copy of FTC Order]

031 0181

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.)	
)	

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of certain acts and practices of the San Juan IPA, Inc. (“San Juan IPA”), hereinafter sometimes referred to as “Respondent,” and Respondent having been furnished thereafter with a copy of the draft of Complaint that counsel for the Commission proposed to present to the Commission for its consideration and which, if issued, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order to Cease and Desist (“Consent Agreement”), containing an admission by Respondent 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 Respondent 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 Respondent has violated the said Act, and that a Complaint should

- H. “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.
- I. “Qualified clinically-integrated joint arrangement” means an arrangement to provide physician services in which:
1. all physicians that 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.
- J. “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 for a capitated rate from payors;
 - 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.

III.

IT IS FURTHER ORDERED that:

- A. Respondent shall, pursuant to each purported qualified risk-sharing joint arrangement or purported qualified clinically-integrated joint arrangement (“Arrangement”), for three (3) years from the date this Order becomes final, notify the Secretary of the Commission in writing (“Qualified Arrangement Notification”) at least sixty (60) days prior to:
1. Participating in, organizing, or facilitating any discussion or understanding with or among any physicians in such Arrangement relating to price or other terms or conditions of dealing with any payor; or
 2. Contacting a payor, pursuant to an Arrangement to negotiate or enter into any agreement concerning price or other terms or conditions of dealing with any payor, on behalf of any physician in such Arrangement.

PROVIDED, HOWEVER, that the Qualified Arrangement Notification required by this Paragraph III.A is not required for negotiations or agreements with subsequent payors pursuant to any Arrangement for which the Qualified Arrangement Notification was given.

- B. Respondent shall include the following information in the Qualified Arrangement Notification:
1. for each physician participant, his or her name, address, telephone number, medical specialty, medical practice group, if applicable, and the name of each hospital where he or she has privileges;
 2. a description of the Arrangement, its purpose, function, and area of operation;
 3. a description of the nature and extent of the integration and the efficiencies resulting from the Arrangement;
 4. an explanation of the relationship of any agreement on prices, or contract terms related to price, to furthering the integration and achieving the efficiencies of the Arrangement;
 5. a description of any procedures proposed to be implemented to limit possible anticompetitive effects resulting from the Arrangement or its activities; and
 6. all studies, analyses, and reports, that were prepared for the purpose of evaluating or analyzing competition for physician services in the Farmington, New Mexico, area, including, but not limited to, the market share of physician services.

- C. If, within sixty (60) days from the Commission's receipt of the Qualified Arrangement Notification, a representative of the Commission makes a written request for additional information to the Respondent, then Respondent shall not engage in any conduct described in Paragraph III.A.1 or Paragraph III.A.2 of this Order prior to the expiration of thirty (30) days after substantially complying with such request for additional information, or such shorter waiting period as may be granted in writing from the Bureau of Competition. The expiration of any waiting period described herein without a request for additional information or without the initiation of an enforcement proceeding shall not be construed as a determination by the Commission, or its staff, that a violation of the law, or of this Order, may not have occurred. Further, receipt by the Commission from Respondent of any Qualified Arrangement Notification, pursuant to Paragraph III of this Order, is not to be construed as a determination by the Commission that any such Arrangement does or does not violate this Order or any law enforced by the Commission.

IV.

IT IS FURTHER ORDERED that, for a period of three (3) years from the date this Order becomes final, Respondent shall notify the Secretary of the Commission in writing ("Messenger Notification") at least sixty (60) days prior to entering into any arrangement with any physicians under which Respondent would act as a messenger, or an agent on behalf of those physicians, with payors regarding contracts or terms of dealing. The Messenger Notification shall include the proposed geographic area of operation, a copy of any proposed physician participation agreement (including a copy of each form intended to be used to communicate with physician participants regarding contracts or terms of dealing with payors), a description of the proposed arrangement's purpose and function, a description of any resulting efficiencies expected to be obtained through the arrangement, and a description of procedures to be implemented to limit possible anticompetitive effects, such as those prohibited by this Order. Messenger Notification is not required for Respondent's subsequent acts as a messenger pursuant to an arrangement for which the Messenger Notification has been given. Receipt by the Commission from Respondent of any Messenger Notification, pursuant to Paragraph IV of this Order, is not to be construed as a determination by the Commission that any action described in such Messenger Notification does or does not violate this Order or any law enforced by the Commission.

V.

IT IS FURTHER ORDERED that Respondent shall:

- A. Within thirty (30) days from the date that this Order becomes final, send by first-class mail, return receipt requested, a copy of this Order and the Complaint to:
1. each physician who participates, or has participated, in Respondent since January 1, 2003;

2. each officer, director, manager, and employee of Respondent; and
 3. the chief executive officer of each payor with which Respondent has a record of having been in contact since January 1, 2003, regarding contracting for the provision of physician services, and include in such mailing the notice specified in Appendix A to this Order;
- B. Terminate, without penalty or charge, and in compliance with any applicable laws, any preexisting contract with any payor for the provision of physician services, at the earlier of: (1) the termination date specified in a written request from a payor to Respondent to terminate such contract, or (2) the earliest termination or renewal date (including any automatic renewal date) of such contract, provided, however, a preexisting contract may extend beyond any such termination or renewal date no later than one (1) year from the date that the Order becomes final if, prior to such termination or renewal date, (a) the payor submits to Respondent a written request to extend such contract to a specific date no later than one (1) year from the date that this Order becomes final, and (b) Respondent has determined not to exercise any right to terminate, provided further, that any payor making such request to extend a contract retains the right, pursuant to part (1) of Paragraph V.B of this Order, to terminate the contract at any time;
- C. Within ten (10) days of receiving a written request from a payor, pursuant to Paragraph V.B(1) of the Order, distribute, by first-class mail, return receipt requested, a copy of that request to each physician participating in Respondent as of the date Respondent receives such request;
- D. For a period of three (3) years from the date that this Order becomes final:
1. Distribute by first-class mail, return receipt requested, a copy of this Order and the Complaint to:
 - a. each physician who begins participating in Respondent, and who did not previously receive a copy of this Order and the Complaint, within thirty (30) days of the time that such participation begins;
 - b. each payor that contracts with Respondent for the provision of physician services, and that did not previously receive a copy of this Order and the Complaint, within thirty (30) days of the time that such payor enters into such contract; and
 - c. each person who becomes an officer, director, manager, or employee of Respondent, and who did not previously receive a copy of this Order and the Complaint, within thirty (30) days of the time that he or she assumes such responsibility with Respondent; and

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on June 30, 2025.

By the Commission, Chairman Majoras not participating.

Donald S. Clark
Secretary

ISSUED: June 30, 2005
SEAL