

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

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

)	
In the Matter of)	
)	Docket No. C-
Boulder Valley Individual Practice Association,)	
 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 Respondent Boulder Valley Individual Practice Association, hereinafter referred to as “Respondent” or “BVIPA,” 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 action concerns horizontal agreements among approximately 365 competing independent physicians and physician practice groups (“physician members”) acting through BVIPA to fix prices and engage in collective bargaining with payers offering coverage for health care services in the Boulder County, Colorado area. Respondent BVIPA orchestrated and carried out these illegal agreements, and its physician members participated in these illegal agreements, which have increased prices for consumers of physician services in the Boulder County area and have no legitimate justification.

THE RESPONDENT

2. Respondent BVIPA is a not-for-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of Colorado, with its principal place of business at 6560 Gunpark Drive, Suite B, Boulder, Colorado 80301.

3. BVIPA 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.

JURISDICTION

4. BVIPA is organized for the purpose, among others, of serving the interest of its members. BVIPA 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.

5. BVIPA is a “corporation” within the meaning of Section 4 of the Federal Trade Commission Act.

6. At all times relevant to the Complaint, BVIPA 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.

7. Except to the extent that competition has been restrained as alleged herein, BVIPA’s physician members have been, and are now, in competition with one another for the provision of physician services in the Boulder County area.

8. The general business practices of BVIPA 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

9. Physicians often contract with health plans and other third-party payers (“payers”) to establish the terms and conditions, including price 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 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 Boulder 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 Boulder County area are members of BVIPA, payers doing business in the Boulder County area have significant difficulty offering marketable and competitive health plans without having at least a substantial portion of BVIPA’s physician members in their provider networks.

ANTICOMPETITIVE CONDUCT

12. BVIPA, acting as a combination of its physician members, and in conspiracy with them, has acted to restrain competition by, among other things, facilitating, negotiating and entering into, and implementing agreements to fix the prices on which their physician members contract with payers; threatening to terminate contracts with payers who refuse to deal with BVIPA; and refraining from negotiating individually with payers.

THE AGREEMENT AMONG BVIPA'S PHYSICIAN MEMBERS TO COORDINATE PRICES

13. BVIPA was formed in 1979 purportedly to coordinate the delivery of medical care and other health care services. Pursuant to BVIPA's Amended and Restated By-Laws, ten to 15 physician members sit on BVIPA's Board of Directors and manage the affairs of the IPA. Physician members elect Board members for three-year terms at BVIPA's annual meeting. The By-Laws also authorize the Board to appoint an executive director to supervise BVIPA activities, subject to the control of the Board.

14. Physicians agree to participate in the contracts that BVIPA signs with payers by joining BVIPA and signing a "Physician Provider Services Agreement." In accordance with the Physician Provider Services Agreement, physician members grant BVIPA the authority to contract with payers on their behalf and they agree to accept payment for their services according to the terms negotiated by BVIPA with payers.

15. Physician members may weigh in on BVIPA's contract negotiations through BVIPA's Finance Committee. The Finance Committee acts as a sounding board where physician members may state their views on the rate level under negotiation. The Finance Committee communicates the physician members' views on whether the rate level is acceptable to the Board and BVIPA's executive director, who actually conducts the negotiations with payers.

BVIPA ENGAGED IN PRICE-FIXING AND THREATENED TO TERMINATE CONTRACTS WITH PAYERS

16. Between 2001 and 2006, BVIPA authorized its executive director to negotiate and sign agreements on behalf of its physician members with approximately 17 payers. After signing the contracts, BVIPA then conducted periodic renegotiations of its contracts with large payers to obtain rate increases. When renegotiating a rate, BVIPA's executive director signed an agreement only when the new rate was deemed to be sufficiently high. BVIPA threatened payers facing rate increases with termination of their contracts when they refused to negotiate or otherwise respond to BVIPA's demands.

17. BVIPA used the same *modus operandi* in all its contract renegotiations. The executive director initiated contact with the payer, usually proposed a fee increase of 4.5 to 5%, and rejected counterproposals that were deemed too low. After reaching agreement with a payer

on an acceptable price level, the executive director signed a contract with the payer on behalf of BVIPA's physician members.

18. To give its executive director clout in the renegotiations, BVIPA newsletters discouraged members from contacting directly with payers. A 2002 newsletter reminded physician members that BVIPA's "strength will lie in contracting together, not separately" and reported that BVIPA was able to pressure a payer into signing its single-signature contract at the rate demanded by BVIPA because of the payer's "inability to get providers to sign individual contracts." A 2005 BVIPA newsletter reminded members that "BVIPA's negotiating strength lies with our members," and regarding contracting with payers, BVIPA "would like to emphasize that the IPA can do its best when we have maximum provider participation and support."

19. Some of BVIPA's physician members with specialties that are particularly important for the marketing of a provider network refused to contract with payers outside BVIPA. Consequently, payers had to negotiate and sign contracts with BVIPA to ensure that these physicians would participate in the payers' health plans.

20. In 2004, BVIPA purported to begin offering payers three options for contracting with BVIPA. The executive director described the three options in a white paper that she drafted and gave to payers at the start of a renegotiation. The contracting options through BVIPA include a single-signature contract that "delivered the entire BVIPA network," and a "modified messenger model" that "may or may not deliver our entire network." A third option included direct contracting with individual members outside the IPA.

21. Although BVIPA's white paper appeared to offer payers a choice of contracting methods, the method that BVIPA used was the single-signature contract. Despite purporting to offer a "modified messenger model," BVIPA did not develop or use a messenger model at all times relevant to this complaint.

22. In those instances when a payer did not cooperate with BVIPA's demands to either begin a renegotiation or agree to certain price levels during a renegotiation, BVIPA's executive director would report that payer to the Board. The Board in turn would vote to threaten the payer with termination of its contract with BVIPA. Payers threatened by the Board with termination ultimately yielded to BVIPA's price demands.

23. By approximately June 2006, BVIPA had renegotiated physician rates on a number of occasions with United Healthcare of Colorado; PacifiCare of Colorado; Aetna Inc.; Sloans Lake Managed Care, Inc.; CIGNA; and others, and signed agreements with those payers memorializing the rate increases on behalf of BVIPA's physician members.

RESPONDENT'S CONDUCT IS NOT JUSTIFIED

24. BVIPA and its physician members have not undertaken any programs or activities that create any integration among their members in the delivery of physician services sufficient to justify their acts or practices described in the foregoing paragraphs. BVIPA members do not share any financial risk in providing physician services, do not collaborate in a program to monitor and modify their clinical practice patterns to control costs or ensure quality, or otherwise integrate their delivery of care to patients.

RESPONDENT'S ACTIONS HAVE HAD SUBSTANTIAL ANTICOMPETITIVE EFFECTS

25. Respondent's actions have had, or tend to have had, the effect of unreasonably restraining trade and hindering competition in the provision of physician services in the Boulder County, Colorado area, in the following ways, among others:

- a. unreasonably restraining price and other forms of competition among physicians;
- b. increasing prices for physician services; and
- c. depriving health plans, employers, and individual consumers of the benefits of competition among physicians.

VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

26. 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 _____, , issues its Complaint against Respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL