

# Citizens for Voluntary Trade

*Better Living through Rational Thinking*

July 6, 2004

Donald S. Clark, Esq.  
Office of the Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., N.W., Room 159-H  
Washington, DC 20580



*Re: In re Southeastern New Mexico Physicians IPA, Inc., et al. (File No. 031-0134)*

Dear Mr. Secretary:

Citizens for Voluntary Trade files the following comments in response to the Federal Trade Commission's entry of a proposed consent order in the above-captioned matter.

The FTC accuses the respondents, Southeastern New Mexico Physicians IPA, Inc. (SENMP), Barbara Gomez, and Lonnie Ray, of violating Section 5 of the Federal Trade Commission Act by engaging in "unfair methods of competition." Specifically, the respondents are accused of conspiring to raise prices for physician services through a series of price-fixing agreements. The Commission says SENMP, through Gomez and Ray, jointly contracted on behalf of 68 physicians with third-party payers in the Roswell area. The Commission determined that these jointly negotiated contracts resulted in higher fees for SENMP physicians than they would otherwise have obtained by negotiating with the payers individually. From this, the Commission concluded that the physicians conspired to subvert the "competitive" market by working together in their mutual self-interest. Accordingly, the Commission forced SENMP to sign a "consent order" dissolving existing contracts with payers and forbidding all respondents from jointly negotiating with payers in the future, except under severe restrictions imposed by the Commission.

In the past three years, the Commission has prosecuted more than 20,000 physicians for alleged Section 5 violations arising from circumstances similar to those alleged in this case. It's painfully obvious that the Commission harbors a deeply ingrained hatred of the medical profession, and that senior Commission officials are utilizing the vast powers of the United States Government to systematically strip physicians of their constitutional rights. The ability to freely negotiate contracts is the centerpiece of economic liberty, and in turn economic liberty is essential to fulfilling man's basic rights to life and the pursuit of happiness. Whether physicians exercise their liberty to contract individually or collectively make no difference. A right is not lost simply because individuals chose to exercise them through a voluntary association.

The Commission claims payers—health insurance companies—were "coerced" into paying artificially high prices because of SENMP's joint contracting. Such claims underscore the Commission's economic illiteracy. First, there is no predetermined "correct" price level for any

Post Office Box 66

Arlington, Virginia 22210

703.740.8309

[www.voluntarytrade.org](http://www.voluntarytrade.org)

good or service. Objective prices can only be decided through the *voluntary* exchange of goods and services on the free market. The Commission contends that SENMP obtained significantly higher prices than other physicians in New Mexico. That, however, is nothing more than a reflection of SENMP's superior efficiency in organizing talented physicians. This is no more coercive than a group of investors pooling their capital to form a corporation to earn a greater return on their investment. The Commission says SENMP's prices were too high when compared to RBRVS, the formula used to calculate the federal government's payments for Medicare and Medicaid. But RBRVS is a *price control* imposed by regulators. It is not a reliable indicator of market prices.

The proposed consent order here amounts to *ad hoc* central planning of the market for health care services in Roswell, New Mexico. The Commission wants to preserve a particular market structure by preventing physicians from acting upon the information that the market provides them. Under the Commission's preferred structure, large payers representing thousands of individuals exercise market power to demand physicians produce at a particular level for a particular price. The Commission makes no effort to examine the actual performance of such an economic model. Indeed, if the Commission took the time to perform genuine economic analysis—as opposed to relying on the parasitic yes-men on its in-house economic staff—it would find that physicians nationwide are struggling under the government-controlled third-party payer system. It is common for physicians to perform basic medical services below cost. When physicians organize and engage in joint contracting, they often do so to preserve the financial viability of their practices. It would, in fact, make little sense for otherwise independent physicians to work together unless it was in their economic self-interest. But the Commission acts as if the physicians have no right to their own interests. This is why, for example, the Commission compares the prices SENMP obtained to an arbitrary figure like the RBRVS, rather than examining the actual economic conditions of the market.

The third-party payer model, not the “greed” of physicians, is the principal cause of higher prices in the health care market. No market, in the absence of government intervention, is organized along the third-party payer model, and with good reason. Imagine if one could not buy food directly from the store, but instead had to purchase “food insurance” whereby a third-party payer decided what food would cost and how much an individual consumer could purchase. Half the nation would face starvation. Third-party payer is simply a euphemism for *government rationing*. And no government rationing scheme has ever outperformed a free market.

The free market does not ration goods, but rather seeks to provide the most efficient distribution of goods and services according to the needs and available resources of individual market participants. The free market does not recognize the Commission's conflict-based division between “producers” and “consumers”—on the free market, all are *traders*. Individuals make their own decisions, and if they so choose, they make those decisions in conjunction with other like-minded individuals. The free market does not distinguish between 20 people who jointly contract to obtain health care services and 20 physicians who jointly contract to provide health care services. Only the Commission—a body of unelected lawyers, trained in the art of manufacturing conflict—believes in such distinctions.

Accordingly, we see no reason for this consent order to be entered. The respondents here acted in full accordance with free market principles, and those principles are wholly consistent with the framework of government advanced in the United States Constitution. The proposed order should be withdrawn, and the Commission should dismiss its complaint against the respondents with all deliberate speed.

Submitted for Your Consideration,

A handwritten signature in cursive script that reads "S.M. Oliva". The signature is written in black ink and is positioned above a horizontal line.

S.M. Oliva

President, Citizens for Voluntary Trade