

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)
)
) Docket No. 9284
MESA COUNTY PHYSICIANS INDEPENDENT)
PRACTICE ASSOCIATION, INC.,)
a corporation.)
)

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Mesa County Physicians Independent Practice Association, Inc. ("Mesa County IPA" and "respondent") has violated and is violating Section 5 of the Federal Trade Commission Act, 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:

PARAGRAPH ONE: Respondent Mesa County IPA is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Colorado, with its address at 751 Horizon Court, Suite 256, Grand Junction, Mesa County, Colorado 81506.

PARAGRAPH TWO: Grand Junction (population exceeds 37,600) is the largest city in Mesa County (population exceeds 100,000), Colorado, and is located approximately 30 miles east of the Utah border. Grand Junction is the largest city between Salt Lake City, Utah to the west, and Denver, Colorado to the east, a distance of approximately 400 miles.

PARAGRAPH THREE: Respondent Mesa County IPA's members include at least 85% of the physicians (medical doctors and doctors of osteopathic medicine) in private practice in Mesa County, as well as at least 90% of the primary care physicians (family practitioners, general practitioners, internists, and pediatricians). These physicians compete in the Mesa County area. All of respondent's members are engaged in the business of providing health care services for a fee. Except to the extent that competition has been restrained as alleged herein, some or all of the physician members of respondent Mesa County IPA have been, and are now, in competition with each other for the provision of physician services.

PARAGRAPH FOUR: The general business practices of respondent Mesa County IPA and its members, including the acts and practices herein alleged, are in or affect "commerce" as defined in the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

PARAGRAPH FIVE: Respondent Mesa County IPA engages in substantial activities for the pecuniary benefit of its members. At all times relevant to this complaint, respondent is and has been organized in substantial part for the profit of its members, and is therefore a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

PARAGRAPH SIX: Respondent Mesa County IPA was formed in or about 1987 to promote the collective economic interests of Mesa County physicians. Respondent, acting as a combination of its members, and in conspiracy with at least some of its members, and others, has acted to restrain competition by, among other things, facilitating, entering into, and implementing agreements among its members, express or implied, to fix price and other competitively significant terms of dealing with payers, or by collectively refusing to deal with payers.

PARAGRAPH SEVEN: Respondent Mesa County IPA has a multi-year contract with the Rocky Mountain Health Maintenance Organization ("Rocky Mountain HMO"). The alliance between respondent and Rocky Mountain HMO has created a substantial obstacle to the ability of other payers to contract with a physician panel in Mesa County. Rocky Mountain HMO enrollees currently comprise at least 50% of the total patient volume of respondent's members.

PARAGRAPH EIGHT: As early as 1993, respondent Mesa County IPA began negotiating collectively, on behalf of all of its members, with several third-party payers. Respondent Mesa County IPA's Board of Directors approved a set of guidelines and a fee schedule to be used by respondent's Contract Review Committee in reviewing contract offers from payers. Respondent's fee schedule resulted in significantly higher prices to several payers for physician services.

PARAGRAPH NINE: Respondent Mesa County IPA, through its newsletters, documents, and other published media, has encouraged its physician members not to deal with new health plans or to do so only on terms that were approved by respondent, and has invited or contemplated concerted action by its members to avoid signing payer contracts. Respondent Mesa County IPA reviewed individual contract offerings to its members by third-party payers, and published adverse comments regarding such contracts. To facilitate its review of all contracts, respondent urged its members to forward all contracts to respondent's Contract Review Committee.

PARAGRAPH TEN: A wide range of third-party payers of physician services, including preferred provider organizations, health maintenance organizations, and employer health care purchasing cooperatives, were excluded from doing business in Mesa County as a result of respondent's conduct. Although most payers sought alternatives to respondent, they were forced to contract with respondent to obtain the physician services they needed to market viable plans, or else abandon their efforts to enter Mesa County.

PARAGRAPH ELEVEN: The physician members of respondent Mesa County IPA have not integrated their practices to create efficiencies sufficient to justify their acts and practices described in Paragraphs 6 through 10.

PARAGRAPH TWELVE: The purpose, effects, tendency, or capacity of the conduct of respondent Mesa County IPA, described in Paragraphs 6 through 10, are and have been to restrain trade unreasonably and hinder competition in the provision of primary care physician services, as well as physician services generally, in the Mesa County area in the following ways, among others:

- A. Price and other forms of competition among respondent Mesa County IPA's member physicians were unreasonably restrained;
- B. Higher prices for physician services have resulted;
- C. The development of alternative health care financing and delivery systems, including employer developed self-funded plans, was hindered;
- D. Health plans, employers, and individual consumers were deprived of the benefits of competition in the purchase of physician services;
- E. Health plans, employers, and individual consumers were deprived of the benefits of competition between health plans.

PARAGRAPH THIRTEEN: The combination, conspiracy, acts and practices described above constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act. 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.

NOTICE

Notice is hereby given to respondent Mesa County IPA, Inc., that the eleventh day of June, 1997, at 10:00 a.m. o'clock, or such later date as determined by an Administrative Law Judge of the Federal Trade Commission, is hereby fixed as the time and the Federal Trade Commission Offices, Sixth Street and Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580, as the place when and where a hearing will be had before an Administrative Law Judge, on the charges set forth in this complaint, at which time and place you will have the right under said Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the twentieth (20th) day after service of it upon you. An answer in which the allegations of this complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material allegations to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint, and together with the complaint will provide a record basis on which the Administrative Law Judge shall file an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding. In such answer you may, however, reserve the right to submit proposed findings and conclusions and the right to appeal the initial decision to the Commission under Section 3.52 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to answer within the time above provided shall be deemed to constitute a waiver of your right to appear and contest the allegations of the complaint and shall authorize the Administrative Law Judge, without further notice to you, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions and order.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in an adjudicative proceeding in this matter that respondent Mesa County IPA is in violation of Section 5 of the Federal Trade Commission Act, as alleged in the complaint, the Commission may order such relief as is supported by the record and is necessary and appropriate, including, but not limited to, an order that respondent Mesa County IPA shall:

1. Reduce its share of the practicing primary care physicians in Mesa County to a level that will prevent any continuation or recurrence of the anticompetitive conduct and effects alleged in the complaint.
2. Cease and desist from fixing, raising, stabilizing, establishing, maintaining, adjusting, or tampering with any fee or aspect of the fee charged for any physician's service, where such conduct is not ancillary to an integrated joint venture.
3. Dissolve the Mesa County IPA's Contract Review Committee, and cease and desist from using any committee of Mesa County IPA members to review any term of third-party payer contracts, where such conduct is not ancillary to an integrated joint venture.
4. Cease and desist from operating or maintaining any joint venture where the members agree to contract with third-party payers exclusively through the Mesa County IPA.
5. Take other appropriate measures or steps to correct or remedy, or prevent the recurrence of, the anticompetitive practices engaged in by respondent.
6. File periodic compliance reports with the Commission.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C. this twelfth day of May, 1997.

By the Commission.

Donald S. Clark
Secretary

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