

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Timothy J. Muris, Chairman  
Mozelle W. Thompson  
Orson Swindle  
Thomas B. Leary  
Pamela Jones Harbour

\_\_\_\_\_)  
)  
In the Matter of )  
) Docket No. C-  
SOUTHEASTERN NEW MEXICO )  
PHYSICIANS IPA, INC., )  
a corporation, )  
)  
and )  
)  
BARBARA GOMEZ and )  
LONNIE RAY, )  
individually. )  
\_\_\_\_\_)

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

## **RESPONDENTS**

2. SENM is a not-for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Mexico, with its principal address at 500 North Main Street, Suite 618, Roswell, NM 88201.

3. Barbara Gomez and Lonnie Ray are individuals who negotiate payor contracts on behalf of SENM's physician members. Their principal address is 500 North Main Street, Suite 618, Roswell, NM 88201.

## **THE FTC HAS JURISDICTION OVER RESPONDENTS**

4. At all times relevant to this Complaint, SENM has been engaged in the business of contracting with payors, on behalf of its physician members, for the provision of health care services to persons for a fee.

5. SENM was founded by, is controlled by, and carries on business for the pecuniary benefit of its physician members. Accordingly, SENM is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

6. Except to the extent that competition has been restrained as alleged herein, SENM physician members have been, and are now, in competition with each other for the provision of physician services in the Roswell area for a fee.

7. Respondents' general business practices, including the acts and practices herein alleged, are in or affecting "commerce" as defined in the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

## **OVERVIEW OF MARKET AND PHYSICIAN COMPETITION**

8. SENM is an independent practice association ("IPA") with approximately 68 physician members, all of whom are licensed to practice allopathic or osteopathic medicine in the State of New Mexico, and engaged in the business of providing physician services to patients in the Roswell area. Approximately 73% of the physicians who independently practice in the Roswell area are members of SENM. To be competitively marketable in the Roswell area, a payor's health insurance plan must include in its physician network a large number of primary care physicians and specialists who practice in that area.

9. Roswell is in southeastern New Mexico. The closest major cities to Roswell are El Paso, Texas, approximately 200 miles to the southwest; Lubbock, Texas, approximately 260 miles to the east; Albuquerque, the largest city in New Mexico, approximately 200 miles to the northwest; and Santa Fe, the state capital and second largest city in the state, approximately 190 miles to the northwest.

10. Physicians often contract with payors to establish the terms and conditions, including price terms, under which the physicians will render services to the payors' subscribers. Physicians entering into such contracts often agree to lower compensation to obtain access to additional patients made available by the payors' relationship with insureds. These contracts may reduce payors' costs and enable them to lower the price of insurance, and thereby result in lower medical care costs for subscribers to the payors' health insurance plans.

11. Absent agreements among competing physicians on the terms, including price, on which they will provide services to enrollees in payors' health care plans, competing physicians decide individually whether to enter into payor contracts to provide services to their subscribers or enrollees, and what prices they will accept pursuant to such contracts.

12. Medicare's Resource Based Relative Value System ("RBRVS") is a system used by the United States Centers for Medicare and Medicaid Services to determine the amount to pay physicians for the services they render to Medicare patients. The RBRVS approach provides a method to determine fees for specific services. In general, payors in the Roswell area make contract offers to individual physicians or groups at a price level specified as some percentage of the RBRVS fee for a particular year (*e.g.*



22. Reflecting SENM's mission as a contracting entity for its members' joint benefit, minutes from a SENM general membership meeting, under the heading "President's Report," state: "Solidarity of IPA – Reinforced the importance that the bargaining strength of the overall organization rests with the solidarity of its membership." When a payor attempted to negotiate individual contracts with SENM's physician members, it was repeatedly rebuffed.

23. In a November 1998 letter to one payor, a SENM representative stated that SENM members had agreed on prices they should receive for physician services, would forward that fee schedule to the payor the next day, and would not deal with that payor unless it "meets or exceeds" those prices. The letter added that SENM would not accept a contract offer "if any single fee is less than what has been approved by the general membership."

24. Prices for physician services in New Mexico typically range from approximately 120% to 140% of RBRVS, for most procedures. Through collective negotiations and threatened refusals to deal, Respondent SENM has contracted for much higher prices than the New Mexico average, including prices as high as 250% of RBRVS for some procedures.

#### **HEALTHSMART PREFERRED CARE**

25. Healthsmart Preferred Care, Inc. ("Healthsmart"), is a health plan doing business in the Roswell area. In July 1997, Healthsmart and SENM, on its members' collective behalf, first entered into a contract. In March 1998, SENM demanded to negotiate a new contract. During these negotiations, SENM, through Ms. Gomez and Ms. Ray, collectively demanded higher fees from Healthsmart. SENM insisted on fees that were, on average, more than 15%

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with these payors individually. Due to SENM's dominant market position in the Roswell area, such coercive tactics have been highly successful. SENM has been able to extract high prices from these payors relative to what the payors pay other physicians in New Mexico.

### **RESPONDENTS' PRICE-FIXING IS NOT JUSTIFIED**

33. Respondents' joint negotiation of fees and other competitively significant contract terms has not been, and is not, reasonably related to any efficiency-enhancing integration.

### **RESPONDENTS' ACTIONS HAVE HAD SUBSTANTIAL ANTICOMPETITIVE EFFECTS**

34. Respondents' actions described in Paragraphs 14 through 32 of this Complaint have had, or have tended to have, the effect of restraining trade unreasonably and hindering competition in the provision of physician services in the Roswell area in the following ways, among others:

1. price and other forms of competition among physician members of SENM were unreasonably restrained;
2. prices for physician services were increased; and
3. health plans, employers, and individual consumers were deprived of the benefits of competition among physicians.

### **VIOLATION OF THE FEDERAL TRADE COMMISSION ACT**

35. 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 \_\_\_\_\_, 2004, issues its Complaint against Respondents SENM, Barbara Gomez, and Lonnie Ray.

By the Commission.

Donald S. Clark  
Secretary

SEAL

ISSUED