

**ANALYSIS OF AGREEMENT CONTAINING
CONSENT ORDER TO AID PUBLIC COMMENT**

In the Matter of San Juan IPA, Inc., File No. 0310181

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order with San Juan IPA, Inc. (San Juan IPA). The agreement settles charges that San Juan IPA violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, by orchestrating and implementing agreements among physician members of San

¹ Some arrangements can facilitate contracting between health care providers and payors without fostering an illegal agreement among competing physicians on fees or fee-related terms. One such approach, sometimes referred to as a “messenger model” arrangement, is described in the 1996 Statements of Antitrust Enforcement Policy in Health Care jointly issued by the Federal Trade Commission and U.S. Department of Justice, at 125. *See* <http://www.ftc.gov/reports/hlth3s.htm#9>.

pricing among its physician members in three ways. First, San Juan IPA was a party to contracts that a joint venture, in which San Juan IPA participated, collectively negotiated on behalf of San Juan IPA's members. Second, San Juan IPA, on behalf of its physician members, collectively negotiated contracts for payment of physician services at full billed charges less a 10% discount, made collective demands, and refused to deal with payors. Finally, San Juan IPA coordinated its members' responses to payor offers for fixed-price contracts, by not transmitting certain offers to its physician members and collectively demanding prices, on behalf of its physician members, from these payors.

San Juan IPA succeeded in forcing numerous health plans to raise the fees paid to its physician members, and thereby raised the cost of medical care in the Farmington area. San Juan IPA engaged in no efficiency-enhancing integration sufficient to justify joint negotiation of fees. By orchestrating agreements among its members to deal only on collectively-determined terms, and actual or threatened refusals to deal with health plans that would not agree to those terms, San Juan IPA violated Section 5 of the FTC Act.

The Proposed Consent Order

The proposed order is designed to remedy the illegal conduct charged in the complaint and prevent its recurrence. It is similar to recent consent orders that the Commission has issued to settle charges that physician groups engaged in unlawful agreements to raise fees they receive from health plans.

The proposed order's specific provisions are as follows:

Paragraph II.A prohibits San Juan IPA from entering into or facilitating any agreement between or among any physicians: (1) to negotiate with payors on any physician's behalf; (2) to deal, not to deal, or threaten not to deal with payors; (3) on what terms to deal with any payor; or (4) not to deal individually with any payor, or to deal with any payor only through an arrangement involving San Juan IPA.

Other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits San Juan IPA from facilitating exchanges of information between physicians concerning whether, or on what terms, to contract with a payor. Paragraph II.C bars attempts to engage in any action prohibited by Paragraph II.A or II.B, and Paragraph II.D proscribes inducing anyone to engage in any action prohibited by Paragraphs II.A through II.C.

As in other Commission orders addressing providers' collective bargaining with health care purchasers, certain kinds of agreements are excluded from the general bar on joint negotiations. San Juan IPA would not be precluded from engaging in conduct that is reasonably necessary to form or participate in legitimate joint contracting arrangements among competing physicians in a "qualified risk-sharing joint arrangement" or a "qualified clinically-integrated joint arrangement." The arrangement, however, must not facilitate the refusal of, or restrict, physicians in contracting with payors outside of the arrangement.

As defined in the proposed order, a “qualified risk-sharing joint arrangement” possesses