

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

_____)
In the Matter of)
)
Roaring Fork Valley Physicians I.P.A., Inc.,)
)
)
a corporation.)
_____) **Docket No. C-**

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of certain acts and practices of Roaring Fork Valley Physicians I. P. A., Inc., hereinafter referred to as “Respondent,” and Respondent having been furnished thereafter with a copy of the draft Complaint that counsel for the Commission proposed to present to the Commission for its

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Respondent” means Roaring Fork Valley Physicians I. P. A, Inc. (“RFVIPA”), its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- B. “Medical Group Practice” means a bona fide, integrated firm in which Physicians practice medicine together as partners, shareholders, owners, or employees, or in which only one Physician practices medicine.
- C. “Non-exclusive Arrangement” means an arrangement that does not restrict the ability of, or facilitate the refusal of, Physicians who participate in it to deal with payors on an individual basis or through any other arrangement.
- D. “Participate” in an entity or an arrangement means (1) to be a partner, shareholder, owner, member, or employee of such entity or arrangement, or (2) to provide services, agree to provide services, or offer to provide services to a Payor through such entity or arrangement. This definition applies to all tenses and forms of the word “participate,” including, but not limited to, “participating,” “participated,” and “participation.”
- E. “Payor” means any person that pays, or arranges for payment, for all or any part of any Physician services for itself or for any other person, as well as any person that develops, leases, or sells access to networks of Physicians.
- F. “Person” means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.
- G. “Physician” means a doctor of allopathic medicine (“M.D.”), a doctor of osteopathic medicine (“D.O.”), or a doctor of podiatric medicine (“D.P.M.”).
- H. “Preexisting Contract” means a contract for the provision of Physician services that was in effect on the date of the receipt by a Payor that is a party to such contract of notice sent by Respondent RFVIPA pursuant to Paragraphs VII.A.2 of this Order of such Payor’s right to terminate such contract.
- I. “Principal Address” means either (1) primary business address, if there is a business address, or (2) primary residential address, if there is no business address.
- J. “Qualified Clinically-Integrated Joint Arrangement” means an arrangement to provide Physician services in which:

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understanding between or among any Physicians with respect to their provision of Physician services:

1. to negotiate on behalf of any Physician with any Payor;
2. to refuse to deal, or threaten to refuse to deal with any Payor, in furtherance of any conduct or agreement that is prohibited by any other provision of Paragraph II of this Order;
3. regarding any term, condition, or re

- E. a copy of any rules, best practices or guidance to providers or payers regarding contracting provisions or the contracting process;
- F. a copy of any rule or requirement regarding participation levels;
- G. a description of any resulting efficiencies expected to be obtained through the proposed arrangement; and
- H. a description of procedures to be implemented to limit possible anticompetitive effects of the proposed arrangement, such as those prohibited by this Order.

IV.

IT IS FURTHER ORDERED that:

- A. If, within sixty (60) days from the date of the Commission's receipt of the Paragraph III Notification, a representative of the Commission makes a written request to Respondent providing such notification for additional information, then Respondent shall not Participate in the proposed arrangement prior to the expiration of thirty (30) days after substantially complying with such request, or such shorter waiting period as may be granted in writing from the Bureau of Competition;
- B. The expiration of any waiting period described herein without a request for additional information, or without the initiation of an enforcement proceeding, shall not be construed as a determination by the Commission, or its staff, that the proposed arrangement does or does not violate this Order or any law enforced by the Commission;
- C. The absence of notice that the proposed arrangement has been rejected, regardless of a request for additional information, shall not be construed as a determination by the Commission, or its staff, that the proposed arrangement has been approved;
- D. Receipt by the Commission of any Paragraph III Notification is not to be construed as a determination by the Commission, or its staff, that the proposed arrangement does or does not violate this Order or any law enforced by the Commission; and
- E. Paragraph III Notification shall not be required prior to Participating in any arrangement for which Paragraph III Notification has previously been given.

V.

IT IS FURTHER ORDERED that for three (3) years from the date this Order becomes final, pursuant to each Qualified Arrangement in which Respondent is a Participant, Respondent shall notify the Commission in writing ("Paragraph V Notification") at least sixty (60) days prior to:

- A. Participating in, organizing, or facilitating any discussion or understanding with or among any Physicians or Medical Group Practices in such Qualified Arrangement relating to price or other terms or conditions of dealing with any Payor; or

- B. Contacting a Payor, pursuant to a Qualified Arrangement to negotiate or enter into any agreement concerning price or other terms or conditions of dealing with any Payor, on behalf of any Physician or Medical Group Practice in such Qualified Arrangement.

VI.

IT IS FURTHER ORDERED that:

- A. Paragraph V Notification shall include the following information regarding the Qualified Arrangement pursuant to which Respondent intends to engage in the above identified conduct:
 - 1. the total number of Physicians and the number of Physicians in each specialty Participating in the Qualified Arrangement;
 - 2. a description of the Qualified Arrangement, including its purpose and geographic area of operation;
 - 3. a description of the nature

- E. Receipt by the Commission of any Paragraph V Notification regarding Participation pursuant to a proposed Qualified Arrangement is not to be construed as a determination by the Commission that any such proposed Qualified Arrangement does or does not violate this Order or any law enforced by the Commission; and
- F. Paragraph V Notification shall not be required prior to Participating in any Qualified Arrangement for which Paragraph V Notification has previously been given.

VII.

IT IS FURTHER ORDERED that Respondent shall:

- A. Within thirty (30) days after the date on which this Order becomes final:
 - 1. send a copy of this Order and the Complaint by first-class mail with delivery confirmation or electronic mail with return confirmation and a letter in Attachment B explaining the Order to:
 - a. every Physician who Participates, or has Participated, in Respondent at any time since January 1, 2001; and
 - b. each current officer, director, manager, and employee of Respondent;
 - 2. send by first-class mail, return receipt requested to the chief executive officer of each Payor with whom Respondent has record of being in contact since January 1, 2001, regarding contracting for the provision of Physician services:
 - a. a copy of this Order and the Complaint; and
 - b. the letter attached as Appendix A to this Order.
- B. Terminate, without penalty or charge, and in compliance with any applicable laws any Preexisting Contract or Contracts with any Payor who is sent the letter attached as Appendix A to this Order, at the earlier of: (1) receipt by Respondent of a written request to terminate such contract from any Payor that is a party to the contract, or (2) the earliest termination date, renewal date (including any automatic renewal date), or the anniversary date of such contract.

PROVIDED, HOWEVER, a Preexisting Contract with a Payor to be terminated pursuant to Paragraph VII.B may extend beyond any such termination or renewal date no later than one (1) year from the date that the Order becomes final if, prior to such termination or renewal date:

- (a) the Payor submits to Respondent a written request to extend such contract to a specific date no later than one (1) year from the date that this Order becomes final, and
- (b) Respondent has determined not to exercise any right to terminate.

PROVIDED FURTHER, that any Payor making such request to extend a contract retains the right, pursuant to Paragraph VII.B. of this Order, to terminate the Preexisting Contract at any time.

- C. Within ten (10) days of receiving a written request to terminate from a Payor, pursuant to Paragraph VII.B of this Order, distribute, by first-class mail, return receipt requested, a copy of that request to each Physician Participating in such contract as of the date that Respondent receives such request to terminate; and
- D. For three (3) years from the date this Order becomes final:
 - 1. Distribute by first-class mail, return receipt requested, a copy of this Order and the Complaint to:
 - a. each Physician who begins Participating in Respondent, and who did not previously receive a copy of this Order and the Complaint from Respondent within thirty (30) days of the time that such Participation begins;
 - b. each Payor who contracts with Respondent for the provision of Physician services, and who did not previously receive a copy of this Order and the Complaint from Respondent, within thirty (30) days of the time that such Payor enters into such contract; and
 - c. each Person who becomes an officer, director, manager, or employee of Respondent, and who did not previously receive a copy of this Order and the Complaint from Respondent, within thirty (30) days of the time that he or she assumes such position;
 - 2. Annually publish in any official report or newsletter sent to all Physicians who Participate in Respondent a copy of this Order and the Complaint with such prominence as is given to regularly featured articles.

VIII.

IT IS FURTHER ORDERED that Respondent shall file verified written reports within sixty (60) days ~~from the date s~~

- C. Copies of the delivery confirmations or electronic mail with return confirmations required by Paragraph VII.A.1, and copies of the signed return receipts required by Paragraphs VII.A.2, VII.C, and VI

Appendix B

[Letterhead of Roaring Fork Valley Physicians I.P.A.]

Dear Member:

The Federal Trade Commission has ordered the Roaring Fork Valley Physicians I. P. A., Inc. ("Roaring Fork"), to cease and desist its collective contracting activities. A copy of the Commission's Complaint and Order is enclosed.

In order that you may readily understand the terms of the Order, we have set forth its essential provisions and describe its application to Roaring Forkna