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and thereby result in lower medical-care costs for enrollees. Payers contract with physicians to ensure their enrollees have access to the medical care and services of those physicians.

12. Absent agreements among competing physicians on the terms, including price, on which they will provide services to payers' enrollees, competing physicians decide individually whether to enter into contracts with payers, and what prices they will accept pursuant to such contracts.

13. Competing physicians may use a "messenger" to facilitate their contracting with payers in ways that do not constitute an unlawful agreement on prices and other competitively significant terms. Such an arrangement, however, will not avoid a horizontal agreement if the "messenger" or another agent: (1) negotiates fees and other competitively significant terms on behalf of the participating physicians, or (2) facilitates the physicians' coordinated responses to contract offers by, for example, electing not to convey a payer's offer to them based on the agent's, or the participants', opinion on the appropriateness, or lack thereof, of the offer.

BVIPA

14. BVIPA is an association of approximately 365 independent primary care and specialist physicians in solo or small group practices in the Boulder County area that contracts with payers on behalf of its physician members. BVIPA was formed in 1979, in part, to coordinate "the delivery of medical care and other health services to persons enrolled in prepaid health service plans and other c

contracts without obtaining approval from the BVIPA Board, Finance Committee, or any of its members.

**MS. HIGGINS ORCHESTRATED BVIPA'S ACTIONS TO FIX PRICES AND
THREATEN TO TERMINATE CONTRACTS WITH PAYERS**

20. From approximately 2001 through 2006, Ms. Higgins, in combination and conspiracy with BVIPA's members, conducted negotiations with numerous payers on behalf of BVIPA physicians and successfully extracted higher fees from them. These payers included United Healthcare of Colorado, PacifiCare of Colorado, Aetna Inc., Sloans Lake Managed Care, Inc. and CIGNA.

21. Ms. Higgins has exhorted BVIPA members to contract jointly through BVIPA, rather than individually, in order to maximize their bargaining leverage and increase the price that BVIPA members can obtain for providing physician services to payers. For example, in a 2002 BVIPA newsletter, Ms. Higgins reminded BVIPA members that "our strength will lie in contracting together, not separately." In the same newsletter, Higgins provided an example of BVIPA members' combined leverage, reporting that BVIPA had accepted a contract at a favorable rate. According to Ms. Higgins, "This is due to your support of our efforts and [the payer's] inability to get providers to sign individual contracts. Thank you for your support!!"

22. Under Ms. Higgins' leadership, BVIPA members have used their combined negotiating leverage to increase the prices that they are paid for physician services. According to BVIPA's medical director, "BVIPA contracts for our physicians with the large insurance companies that do business in Boulder County. We think we negotiate the best contracts with the highest reimbursements for our physicians in general."

23. By approximately June 2006, Ms. Higgins had renegotiated BVIPA's fees on a number of occasions with United Healthcare of Colorado; PacifiCare of Colorado; Aetna Inc.; Sloans Lake Managed Care, Inc.; CIGNA; and others, and signed agreements with those payers memorializing the rate increases on behalf of BVIPA's physician members.

24. Beginning in late in 2007 and continuing until early 2009, Ms. Higgins, as BVIPA's executive director, negotiated and consulted for some of BVIPA's physician members who sought to contract individually with a payer, thereby facilitating the exchange of rate information among them, and facilitating the coordination of rates during the individual negotiations.

25. As a result of Ms. Higgins' collective negotiations of physician fees for BVIPA members, payers contracted with and reimbursed BVIPA members for physician services in Boulder County at rates approximately 15 to 27 percentage points higher than those paid in individual contracts with non-member physicians in Boulder County.

MS. HIGGINS OFFERED PAYERS FICTITIOUS CONTRACTING CHOICES

26. In 2004, BVIPA purported to begin offering payers three options for contracting with BVIPA. Ms. Higgins described the three options in a so-called “white paper” that she drafted and gave to payers at the start of a renegotiation. The white paper’s contracting options through BVIPA included a collectively-negotiated con0000 TD(PA i)Tj21.7202nte

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VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

43. 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 thirtieth day of March, 2010, issues its complaint against Respondent.

By the Commission, Commissioner Rosch dissenting.

Donald S. Clark
Secretary

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