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**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

In the Matter of)
)
SOUTHW) **DOCKET NO. C-4327**

4. Except to the extent that competition has been restrained as alleged herein, BSAPN's physician members have been, and are now, in competition with each other for the provision of physician services in the Amarillo, Texas, area.

5. Respondent is a "person," "partnership," or "corporation" within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

6. Respondent's 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 PHYSICIAN CONTRACTING WITH PAYERS

7. Individual physicians and physician group practices contract with payers of healthcare services and benefits, health maintenance organizations (HMOs), preferred provider organizations (PPOs), self-insured employers, and others, to establish the terms and conditions, including price terms, under which the physicians will render their professional medical services to the payers' subscribers or covered employees and dependents.

8. Physicians and physician group practices sometimes form or participate in financially-integrated or clinically-integrated joint ventures to provide physician services under agreements with payers willingly seeking such arrangements. Under such arrangements, the physicians and physician group practices may share financial risks and rewards based on their collective success in achieving pre-established targets or goals regarding aggregate utilization and costs of the services provided to covered individuals or they may engage in other behavior to obtain efficiencies.

9. A PHO that employs physicians may, if it is financially-integrated or clinically-integrated, organize and operate its own HMO or PPO by contracting with its non-employed members, as well as with other hospitals and physician group practices.

Alternatively, the messenger may receive authority from the individual physicians to accept contract offers that meet certain criteria.

12. Other than through their participation in integrated joint ventures, and absent anticompetitive agreements among them, otherwise competing physicians and physician g

19. Since at least 2000, BSAPN has used the prices in its own fee schedule as a signaling device as to whether its members should accept or reject offers it messengered on behalf of some payers.

20. Since at least 2000, BSAPN, with some payers, has renegotiated contracts that were originally administered through a messenger model. In these renegotiations, price was increased based on a demand BSAPN made on behalf of its physician members. The physician members received a new, higher reimbursement rate and did not make a unilateral, independent decision to accept or reject a payer's offer.

21. Since at least 2000, BSAPN has periodically increased the rates of its own fee schedule in contracts administered through a reverse messenger model. In implementing these rate increases, BSAPN did not survey its physician members on a unilateral, independent basis to determine at what price level each of them would agree to contract with payers.

RESPONDENT'S CONDUCT IS NOT LEGALLY JUSTIFIED

22. Respondent's joint negotiation of fees and other competitively significant terms, and the agreements, acts, and practices described above, have not been, and are not, reasonably related to any efficiency-enhancing integration among the physician members of BSAPN.

RESPONDENT'S ACTIONS HAVE HAD, OR COULD BE EXPECTED TO HAVE, SUBSTANTIAL ANTICOMPETITIVE EFFECTS

23. Respondent's actions described in Paragraphs 14 through 16 of this Complaint have had, have tended to have, or if successful would have had, the effect of restraining trade unreasonably and hindering competition in the provision of physician services in the Amarillo, Texas, area in the following ways, among others:

- A. unreasonably restraining price and other forms of competition among physicians who are members of BSAPN;
- B. increasing prices for physician services;
- C. depriving payers, including insurers and employers, and individual consumers, of the benefits of competition among physicians; and
- D. depriving consumers of the benefits of competition among payers.

24. The combination, conspiracy, acts, and practices described above constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 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 eighth day of July, 2011, issues its Complaint against Respondent BSAPN.

By the Commission.

Donald S. Clark
Secretary

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