

**Remarks of FTC Chairman Jon Leibowitz  
As Prepared for Delivery  
FTC/CMS Workshop on Accountable Care Organizations  
Tuesday, October 5, 2010**

Thank you very much, Don. I'd like to join Dr. Berwick and HHS Inspector General Levinson and welcome all of you to this workshop. The promise of ACOs – that creative health care practitioners can collaborate legally to deliver higher-quality health care at a lower cost – offers a real opportunity for health care reform.

Our job at the FTC, CMS, and the Office of the Inspector General at HHS is to ensure that regulation encourages that innovation and, likewise, benefits health care consumers. Today's workshop reflects an unprecedented effort among our agencies to come together and coordinate our requirements for ACOs based on the Stark Law, anti-kickback law, civil monetary penalties, and the antitrust laws.

From an antitrust perspective, we want to explore whether we can develop safe harbors so doctors, hospitals, and other medical professionals know when they can collaborate and when they cannot. We are also considering whether we can put in place an expedited review process for those ACOs that fall outside of the safe harbors.

Your job in the private sector is to tell us what you think is the best way to proceed. We need to learn more about your ideas for, and concerns about, ACOs. We received a number of excellent written comments last week, and we have been reading them carefully. We are also keeping the comment period open so that, if today's discussion sparks additional thoughts, you can bring them to our attention – we hope within the next two weeks.

We need your input because we need to get this right. If ACOs end up stifling rather than unleashing competition, we will have let one of the great opportunities for real health care reform slip away. We can't afford to let that happen.

I am here today to tell you – I am not that lawyer.

I am here today to tell you – no one at the Federal Trade Commission is that lawyer.

Unfortunately, but not surprisingly, in the past too many health care providers saw antitrust regulators as just that. We know this from comments we receive when we resolve cases involving health care providers. For example, we recently settled a case against a group of doctors in Garfield County, Colorado.<sup>1</sup> One doctor accused the FTC of causing a shortage of physicians.<sup>2</sup> Another complained that our actions “defy logic.”<sup>3</sup> Still another told us that our decision “goes beyond socialism, it is a return to serfdom.”<sup>4</sup>

The picture painted by these comments is not pretty. By a few health care providers – and I am glad it is only a few – we are seen as surreptitious socialists bent on keeping doctors from charging a fair price for their services, as heartless regulators holding doctors to outdated antitrust rules that no other health care player has to follow, or as fastidious bureaucrats rejecting any change that would allow doctors to care for patients more efficiently.

Step back from those stereotypes, though, and you see that the FTC is, more often than not, on the side of health care providers – as professionals who care about their patients and as consumers themselves.

When competitors get together to fix prices, create market power, or prevent competition, that’s illegal because it almost always leads to higher prices, lower quality, less innovation, and fewer choices for consumers. The antitrust agencies enforce these antitrust laws whether it is doctors, hospitals, health care insurers, pharmaceutical companies, real estate agents, or computer companies.

Too often, I believe, the health care community sees our antitrust enforcement actions as impeding improved care. If there is any stereotype I would like to disabuse you of today, that’s the one.

Take the case of Grand Junction, Colorado. Back in the mid-1990s, the FTC found that physicians in Grand Junction were charging prices significantly higher than elsewhere

---

<sup>1</sup> Public Comments in response to *In the matter of Roaring Fork Valley Physicians I.P.A., Inc.* (2010),

in the state.<sup>5</sup> Almost all of the doctors in Grand Junction had agreed that a single organization would bargain with health in