

Complaint

IN THE MATTER OF

R. T. WELTER AND ASSOCIATES, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-4063; File No. 0110175**Complaint, October 8, 2002--Decision, October 8, 2002*

This consent order addresses practices used by Respondents R.T. Welter and Associates, Inc. ("RTWA"), R. Todd Welter – a non-physician consultant who through his company, RTWA, represented a group of approximately 88 physicians specializing in obstetrics and gynecology known as Professionals in Women's Care ("PIWC") – and eight medical group practices in the Denver, Colorado metropolitan area. The order, among other things, prohibits the respondents 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 the respondents. The order also prohibits the respondents from facilitating exchanges of information between physicians concerning whether, or on what terms, to contract with a payor. In addition, the order prohibits the respondents from attempting to engage in – or from inducing anyone to engage in – any action prohibited by the order. In addition, the order prohibits Respondents RTWA and Welter, for three years, from negotiating with any payor on behalf of any PIWC physician, and from advising any PIWC physician to accept or reject any term, condition, or requirement of dealing with any payor. The order also requires Respondent RTWA to distribute the complaint and order to all physicians who participated in PIWC – and to the payors that negotiated contracts with RTWA or Respondent Welter on behalf of any of the eight respondent practice groups – and requires the Respondent Practice Groups to terminate – without penalty at any payor's request – current contracts, with respect to providing physician services, negotiated by Respondent Welter with payors.

Participants

For the Commission: *Paul J. Nolan, Christi J. Braun, David R. Pender, Jeffrey W. Brennan, Rendell A. Davis, Jr., Daniel P. Ducore, Fred Martin, Thomas Iosso and Louis Silvia.*

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For the Respondents: *Colleen Rea, Stromberg Cleveland Crawford & Schmidt, P.C., Claude Wild, III, Patton Boggs LLP, and Neil Peck, Snell & Wilmer.*

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Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U. S. C. § 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the corporations, partnership, and individual named in the caption hereof, hereinafter collectively referred to as “Respondents,” have violated and are violating Section 5 of the Federal Trade Commission Act, 15 U. S. C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges in that respect as follows:

RESPONDENTS AND JURISDICTION

PARAGRAPH 1: Respondent R.T. Welter and Associates, Inc. (hereinafter “Respondent RTWA”) is a for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Colorado, with its office and principal place of business located at 655 Broadway, Suite 500, Denver, CO 80203. Respondent RTWA is a consulting firm that offers services to physician clients, in Denver and elsewhere, including the service of representing physicians in contract negotiations with health insurance firms and other third-party payors.

PARAGRAPH 2: R. Todd Welter (hereinafter “Respondent Welter”) is president of Respondent RTWA. His office and principal place of business is 655 Broadway, Suite 500, Denver, CO 80203. Respondent Welter is a consultant, operating through RTWA, who represents physicians in contract negotiations with health insurance firms and other third-party payors.

PARAGRAPH 3: In October 1999, Respondents RTWA and Welter organized numerous physicians into a concerted

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arrangement for the purpose of collective contract negotiations with health insurance firms and other third-party payors. These physicians specialize in the practices of obstetrics and gynecology (“OB/GYNs”) in the Denver metropolitan area. Respondents named their concerted arrangement “Professionals in Women’s Care” (hereinafter “PIWC”). Aside from the name itself, PIWC lacked any indicia of a formal entity, such as officers, directors, or by-laws. Nonetheless, Respondents Welter and RTWA routinely referred to PIWC’s participating physicians as “members” in correspondence.

PARAGRAPH 4: The medical group practice firms listed below (hereinafter “Respondent Practice Groups”), among the largest OB/GYN medical group practices in the Denver metropolitan area, are participants in PIWC. Each contracted with Respondent RTWA for the purpose of negotiating contracts with health insurance firms and other third-party payors. Respondent Practice Groups are and have been, at all times relevant to this complaint, organized for profit within the meaning of Section 4 of the Federal Trade Commission Act. They are:

- A. Respondent Cohen and Womack, M.D., P.C., a professional corporation with its office and principal place of business located at 255 Union Boulevard, Suite 200, Lakewood, CO 80228.
- B. Respondent Consultants in Obstetrics and Gynecology, P.C., a professional corporation with its office and principal place of business located at 4500 East 9th Ave, Suite 300, Denver, CO 80220.
- C. Respondent Mid Town Obstetrics & Gynecology, P.C., a professional corporation with its office and principal place of business located at 2005 Franklin Street, Midtown II, Suite 440, Denver, CO 80205.
- D. Respondent Mile High OB/GYN Associates, P.C., a professional corporation with its office and principal place

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of business located at 455 South Hudson St., Level 2,
Denver, CO 80246.

- E. Respondent The OB-GYN Associates Professional Corporation, a professional corporation with its office and principal place of business located at 3773 Cherry Creek North Drive, Suite 100, Denver, CO 80209.
- F. Respondent Rocky Mountain OB-GYN, P.C., a professional corporation with its office and principal place of business located at 4500 East 9th Ave., Suite 200-S, Denver, CO 80220.
- G. Respondent The Women's Health Group, P.C., a professional corporation with its office and principal place of business located at 9195 Grant Street, Suite 300, Thornton, CO 80229.
- H. Respondent Westside Women's Care, L.L.P., a partnership of professional corporations with its office and principal place of business located at 7950 Kipling Street, Suite 201, Arvada, CO 80005.

PARAGRAPH 5: At all times relevant to this Complaint, Respondents RTWA and Welter were engaged in the business of providing consulting services in the Denver metropolitan area to OB/GYNs who provide health care services for a fee to patients. All members of the Respondent Practice Groups, and all other PIWC participants, are physicians engaged in the business of providing obstetrical and gynecological services for a fee to patients, are licensed to practice medicine in the State of Colorado, and have offices located in the Denver metropolitan area. Except to the extent that competition has been restrained as alleged herein, Respondent Practice Groups have been, and are now, in competition with each other, with other PIWC participants, and with other OB/GYNs for the provision of physician services.

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PARAGRAPH 6: The Respondents' general business practices, including the acts and practices alleged herein, are in or affecting "commerce" as defined in the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

OVERVIEW OF MARKET AND PHYSICIAN COMPETITION

PARAGRAPH 7: Approximately 88 OB/GYNs participate in PIWC. These PIWC participants constitute a significant percentage of the OB/GYNs practicing in the Denver metropolitan area. About one-half of the participants in PIWC are OB/GYNs who practice medicine through one of the Respondent Practice Groups.

PARAGRAPH 8: Physicians often contract with health insurance firms and other third-party payors (hereinafter "payors"), such as preferred provider organizations. Such contracts typically establish the terms and conditions, including fees and other competitively significant terms, under which the physicians will render services to the payors' subscribers. Physicians entering into such contracts often agree to lower compensation, in order to obtain access to additional patients made available by the payors' relationship with insureds. These contracts may reduce payors' costs and enable payors to lower the price of insurance, and thereby result in lower medical care costs for subscribers to the payors' health insurance plans.

PARAGRAPH 9: Absent agreements among competing physicians on the terms, including price, on which they will provide services to subscribers or enrollees in health care plans offered or provided by third-party payors, competing physicians decide individually whether to enter into contracts with third-party payors to provide services to their subscribers or enrollees, and what prices they will accept pursuant to such contracts.

PARAGRAPH 10: Medicare's Resource Based Relative Value System ("RBRVS") is a system used by the Centers for Medicare

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and Medicaid Services to determine the amount to pay physicians for the services they render to Medicare patients. The RBRVS approach provides a method to determine fees for specific services. It is the practice of payors in the Denver metropolitan area to make contract offers to individual physicians at a fee level specified in the RBRVS for a particular year, plus a markup based on some percentage of that fee (*e.g.*, “110 percent of 2001 RBRVS”). Most gynecological services and some obstetrical services are reimbursed according to this system.

PARAGRAPH 11: Obstetrical professional services include services for childbirth and related prenatal and postnatal services. In most payor contracts for such services in the Denver metropolitan area, obstetricians receive a “global” fee for attending a normal delivery, regardless of the number of visits or associated services the physician provides to the patient.

PARAGRAPH 12: In order to be competitively marketable in the Denver metropolitan area, a payor’s health insurance plan must include in its physician network a large number of OB/GYNs who practice in the Denver metropolitan area. A significant percentage of the OB/GYNs who practice in the Denver metropolitan area participate in PIWC.

PARAGRAPH 13: Competing physicians sometimes use a “messenger” to facilitate the establishment of contracts between themselves and payors in ways that do not constitute or facilitate an unlawful agreement on fees and other competitively significant terms. Such a messenger may not, however, consistent with a competitive model, negotiate fees and other competitively significant terms on behalf of the participating physicians, or facilitate the physicians’ coordinated responses to contract offers by, for example, electing not to convey a payor’s offer to them based on the messenger’s opinion on the appropriateness, or lack thereof, of the offer.

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RESTRAINT OF TRADE

PARAGRAPH 14: The Respondent Practice Groups, acting as a combination of competing physicians through PIWC, and Respondents RTWA and Welter, in conspiracy with the Respondent Practice Groups, have acted to restrain competition by, among other things:

- A. facilitating, negotiating, entering into, or implementing agreements on fees and other competitively significant terms;
- B. refusing to deal with payors except on collectively agreed-upon terms; and
- C. negotiating uniform fees and other competitively significant terms in payor contracts for PIWC's participants, and refusing to submit payor offers to PIWC participants that do not conform to Respondents' standards for contracts.

FORMATION AND OPERATION OF PIWC

PARAGRAPH 15: Respondent Welter and Respondent Practice Groups organized collectively under the name "PIWC" in October 1999 to engage in collective contract negotiations with payors. Respondent Welter and the Respondent Practice Groups encouraged other OB/GYNs to participate in PIWC for the purpose of acting as a united front to demand and receive higher fees and other, more advantageous terms from payors. Respondent Welter enlisted participation in PIWC by promising to "stop the downward slide of reimbursement from managed care insurance companies."

PARAGRAPH 16: In or about October 1999, Respondent Welter and representatives of the Respondent Practice Groups created the "Steering Committee," as a means to manage the collusive arrangement known as PIWC. The Steering Committee

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was composed of one representative from each of the Respondent Practice Groups. The PIWC Steering Committee was responsible for adoption of a general strategy that Respondent Welter would use to negotiate higher fees from payors on behalf of PIWC's participating physicians. Respondent Welter advised Steering Committee members that they "must meet periodically to discuss the [PIWC's] operations, set managed care targets, and to discuss and agree on strategy."

PARAGRAPH 17: The OB/GYNs who participate in PIWC do not pay membership fees or make capital contributions. Instead, they jointly pay Respondent Welter an hourly fee to represent them in contract negotiations with payors. OB/GYNs participating in PIWC, or the medical group practices in which they were members, signed an agreement authorizing Respondent Welter to negotiate, on their behalf, fees and other terms of "non-risk" managed care contracts with payors. In non-risk contracts, physicians and payors do not share financial risk through arrangements such as capitation or fee withholds.

PARAGRAPH 18: Respondent Practice Groups and other PIWC participants collectively decided to authorize Respondent Welter to renegotiate fee terms contained in existing payor contracts, advised Respondent Welter to reject payor fee offers that were too low, and determined whether Respondent Welter should deal with a particular payor. As contract negotiations with particular payors progressed, Respondent Welter regularly held Steering Committee meetings and general meetings among all PIWC participants to discuss details of his payor contract negotiations, including the status of fee negotiations, the specific fee levels that were discussed, and overall contract strategy.

PARAGRAPH 19: Respondent Welter has a practice, inconsistent with a messenger model arrangement, of not conveying to PIWC participants the terms of payor offers that Respondent Welter and the Respondent Practice Groups deem deficient. The Respondent Practice Groups, and the PIWC participants more generally, understood and jointly agreed that

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Respondent Welter would first negotiate with payors for favorable contract terms. Respondents understood that the payors would offer more advantageous terms to PIWC participants if the physicians negotiated on a collective, rather than unilateral, basis. Only after engaging in such jointly authorized negotiations did Respondent Welter convey the payor contract in question to PIWC participants for approval.

PARAGRAPH 20: PIWC participants knew from Respondent Welter's regular reports and updates that he was simultaneously representing all of the PIWC participants in contract negotiations with payors, and that he represented them all for the common purpose of attaining higher fees for them. Respondent Welter, with the approval of the Respondent Practice Groups, solicited *de facto* exclusivity among PIWC participants, by requesting that they terminate their relationships with independent practice associations ("IPAs") and practice management groups ("PMGs") in the Denver metropolitan area. He urged the PIWC participants to "terminate their IPA affiliations so that the payors can only access them through one direct agreement negotiated through Professionals in Women's Care," stating that "[i]n this way maximum leverage can be made." Many PIWC participants, including most Respondent Practice Groups, terminated their affiliations with such other physician organizations.

PARAGRAPH 21: Respondent Practice Groups exploited PIWC's collective power to exact higher fees and more favorable price-related terms in payor contracts, by using Respondents Welter and RTWA to demand that payors provide PIWC participants with a new contract offer containing more lucrative terms. Many PIWC participants, on whose behalf Respondent Welter made these demands, were already under contract with these payors for a considerable period into the future. Respondent Welter advised PIWC participants, including Respondent Practice Groups, to terminate existing contracts with payors that refused to deal with Respondent RTWA, and Respondent Practice Groups and other PIWC participants followed Respondent Welter's advice by terminating existing payor contracts. Respondent

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Practice Groups knew that Respondent Welter was representing the PIWC participants as a group, and telling payors that the PIWC Participants were united in bargaining for higher contract fees.

PARAGRAPH 22: Respondents' strategy of collective contract negotiations and concerted refusals to deal individually left payors in the untenable position of having to pay higher fees to the PIWC participants or being denied the OB/GYNs' inclusion in the payors' provider networks – an outcome that would have substantially impaired the payors' ability to compete effectively.

PARAGRAPH 23: In the first year after PIWC was organized, Respondent Welter presented PIWC participants with data that Respondent Welter characterized as showing that their jointly negotiated payor contracts paid each PIWC participant, on average, an 11% increase in fees over the previous year's contracts.

NEGOTIATIONS WITH PACIFICARE

PARAGRAPH 24: PacifiCare Health Systems of Colorado ("PacifiCare") is a payor doing business in the Denver metropolitan area. In the late summer and fall of 1999, PacifiCare made contract offers to numerous OB/GYNs in the Denver metropolitan area. In its contracts, PacifiCare proposed a fee-for-service arrangement based on a percentage of RBRVS; the percentage could be adjusted downward if the physicians' expenses exceeded a pre-determined budgeted amount. Respondent Practice Groups objected to these terms, and collectively retained Respondents RTWA and Welter to negotiate for a different agreement on their behalf.

PARAGRAPH 25: On October 21, 1999, in what would be the first coming together of the arrangement later named "PIWC," Respondent Welter and the Respondent Practice Groups convened a meeting among themselves and OB/GYNs from 7 Denver area hospitals to discuss and jointly respond to PacifiCare's contract

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offer. At this meeting, the OB/GYNs voted unanimously to authorize Respondent Welter to represent them and negotiate for higher fees on their behalf with PacifiCare. A few days later, Respondent Welter informed PacifiCare that the OB/GYNs had reached a “unanimous decision” to request a meeting with PacifiCare representatives regarding PacifiCare’s contract offer, and had unanimously “decided not to sign the current agreement.”

PARAGRAPH 26: Respondent Welter advised the PIWC participants, including Respondent Practice Groups, to refuse to sign individual PacifiCare agreements, to refer any communications they may receive from PacifiCare on to Respondent Welter, and to terminate their relationships with IPAs and PMGs under contract with PacifiCare. The purpose of this strategy was to ensure that PacifiCare could only have the PIWC participants in its physician network if it negotiated exclusively with Respondent Welter. PIWC participants, including Respondent Practice Groups, complied with this strategy. Respondent Welter told the PIWC participants that the “termination process” would lead to “payor panic,” an outcome that would create bargaining leverage for the collection of PIWC participants. Respondent Welter and the Respondent Practice Groups knew that unless PacifiCare acquiesced in their demands for higher fees, PacifiCare would have no contract with PIWC participants after January 1, 2000.

PARAGRAPH 27: Respondent Welter told PacifiCare’s representatives that the PIWC participants had joined together for the purpose of securing higher fees and better contract terms from payors. He told PacifiCare that he was the agent for all of the OB/GYNs participating in PIWC, that they demanded higher fees from PacifiCare, and that the OB/GYNs had instructed him to tell PacifiCare that they would not agree to PacifiCare’s current contract offer.

PARAGRAPH 28: In response to Respondent Welter’s threat that none of the PIWC participants would sign individual agreements under the current contract proposal, PacifiCare

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increased its fee offer, both with respect to global delivery fees and RBRVS for OB/GYN services. In March 2000, Respondent Welter informed the PIWC participants that he had succeeded in convincing PacifiCare to offer higher fees. Subsequently, on behalf of PIWC participants, including the Respondent Practice Groups, Respondents RTWA and Welter continued to negotiate fee-related contract language with PacifiCare. When the negotiations were completed, Respondent Welter sent to each PIWC participant an individual PacifiCare contract reflecting the higher fees that he had negotiated. The PIWC participants, including the Respondent Practice Groups, thereafter signed individual agreements.

NEGOTIATIONS WITH AETNA U.S. HEALTHCARE

PARAGRAPH 29: In 2000, Respondent Practice Groups, in their capacity as the PIWC Steering Committee, convened a meeting to consider actions against another payor doing business in the Denver metropolitan area, Aetna U.S. Healthcare (“Aetna”). At that time, Aetna’s standard contract with OB/GYNs contained terminology aimed at controlling the cost of routine care. Respondent Practice Groups and Respondent Welter collectively demanded that Aetna rewrite the OB/GYNs’ contracts, to eliminate all cost control measures and to agree to the specified fees. Aetna refused these demands and informed Respondent Welter that the OB/GYNs could renegotiate with Aetna on an individual basis.

PARAGRAPH 30: Following Aetna’s rejection, Respondent Welter, together with the Respondent Practice Groups, coordinated a response. He informed all PIWC participants that “we have had [a] very unsatisfactory response from Aetna regarding your concerns for proper payment.” Respondent Welter requested that the PIWC participants notify him or his assistant should Aetna request that the OB/GYNs sign an individual contract, so that he could negotiate with Aetna on all the OB/GYNs’ behalf.

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PARAGRAPH 31: In or about August, 2000, on the collective behalf of the PIWC participants, Respondent Welter issued to Aetna a September 15, 2000, “deadline for Aetna’s response to our contract issues.” On October 11, 2000, after Aetna refused to meet Respondent Welter’s demands, Respondent Welter told the PIWC participants that due to the “inadequate results the current course of action is having,” “your only option may be to terminate with Aetna.” Around the same time, Respondent Welter told the Respondent Practice Groups that “we are unable to leverage contracts if the members are un-willing to: say NO to bad rates [and] get OUT of other entanglements,” such as IPAs and PMGs, and align themselves exclusively as a group through PIWC. Respondent Welter threatened to resign as the PIWC participants’ agent, unless PIWC participants were willing to hold out for higher fees and terminate their IPA and PMG affiliations. In order to ensure solidarity in their contracting actions, Respondent Welter, with the authority of the Steering Committee, advised the PIWC participants to terminate their IPA and PMG affiliations, which most did.

PARAGRAPH 32: Soon after the efforts of Respondent Welter and the Respondent Practice Groups to ensure “solidarity” among PIWC participants, more than thirty PIWC Participants sent termination notices to Aetna. Concerned that a boycott among PIWC participants would damage its ability to compete, Aetna delivered to Respondent Welter new contracts that raised fees to the higher level that Respondents were demanding. Respondent Welter forwarded the Aetna contracts containing the higher fees to PIWC participants, all of whom signed them.

NEGOTIATIONS WITH ANTHEM BLUE CROSS & BLUE SHIELD

PARAGRAPH 33: Anthem Blue Cross & Blue Shield of Colorado (“Anthem”) is a payor doing business in the Denver metropolitan area. Beginning in or about June 2000 and extending through 2001, Respondent Welter met with Anthem representatives to negotiate better contract terms, including higher

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fees, for PIWC participants. At the time of these negotiations, Anthem had individual contracts with all PIWC participants.

PARAGRAPH 34: In or about early September 2000, Anthem made a contract offer to the PIWC participants, which they all rejected. Anthem made a second contract offer in late September 2000, which contained higher fees for gynecological services than the prior offer. On October 12, 2000, Respondent Welter sent a letter to Anthem, in which he stated that “we represent approximately 85 OB/GYNs in the Denver area,” that 70 of those physicians rejected Anthem’s most recent offer, that Anthem “should consider the attached rejections as [termination] notice from these physicians,” and that the terminating physicians would “begin to immediately notify their patients that they are not on Anthem’s panel.”

PARAGRAPH 35: In response to Respondent Welter’s letter, which expressly or impliedly threatened a group boycott, Anthem submitted a revised contract offer to the PIWC participants. Anthem’s new offer contained the highest fees that it was currently paying to any OB/GYNs in the Denver area, including to some of the PIWC participants, who had renewed their individual contracts at these same fee levels. The fees contained in Anthem’s latest offer, however, were still lower than what the Respondent Practice Groups and other PIWC participants, through Respondent Welter, had demanded. Accordingly, Respondent Welter advised the PIWC participants to reject the Anthem offer, and more than 30 of them did so. Subsequently, many PIWC participants, including some of the Respondent Practice Groups, wrote letters to Anthem, stating that Respondent Welter was their negotiator and that they were terminating their individual contracts. Respondent Welter personally delivered these letters to Anthem.

PARAGRAPH 36: The simultaneous loss of many OB/GYNs from its health care plan physician network would have adversely affected Anthem’s ability to compete in the Denver metropolitan area. Accordingly, to avoid losing numerous PIWC participants

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from its network, Anthem increased its fee offer to the level that Respondents and the PIWC participants demanded, and all participants signed contracts with Anthem.

NEGOTIATIONS WITH OTHER PAYORS

PARAGRAPH 37: Since PIWC's inception in 1999, Respondents RTWA and Welter have informed other payors that they represented between 85 and 88 OB/GYNs in the Denver metropolitan area. With the advice and consent of representatives of the Respondent Practice Groups, Respondent Welter has informed these payors of the fees that the PIWC participants collectively demanded as a condition for contracting with these payors. The Respondent Practice Groups authorized Respondent Welter to tell these payors that PIWC participants would refuse any contract offering fees that were below a specified percentage of Medicare RBRVS and a specified global fee for obstetrical care. Respondent Welter has negotiated contracts with at least two other payors for fees matching or exceeding the levels that Respondents collectively demanded. At all times applicable herein, the Respondent Practice Groups have assisted Respondents RTWA and Welter in developing and coordinating strategy for negotiating terms and rates with particular payors, prior to and during the course of contract negotiations.

LACK OF EFFICIENCIES

PARAGRAPH 38: In collectively negotiating and entering the contracts identified above, the Respondent Practice Groups and other PIWC participants refused to consider any form of financial risk-sharing and have not integrated their practices to create sufficient potential efficiencies. Respondents' joint negotiation of fees and other competitively significant terms has not been, and is not, reasonably related to any efficiency-enhancing integration.

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ANTICOMPETITIVE EFFECTS

PARAGRAPH 39: Respondents' actions described above in Paragraphs 14 through 38 have had, or have the tendency to have, the effect of restraining trade unreasonably and hindering competition in the provision of physician services in the Denver metropolitan area in the following ways, among others:

- A. fees and other forms of competition among the Respondent Practice Groups and other PIWC participants were unreasonably restrained;
- B. fees for obstetrical and gynecological services were increased; and
- C. competition in the purchase of physician services was restrained to the detriment of health plans, employers, and individual consumers.

PARAGRAPH 40: 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 eighth day of October, 2002, issues its Complaint against Respondents R. T. Welter and Associates, Inc.; R. Todd Welter; Cohen and Womack, M.D., P.C.; Consultants in Obstetrics and Gynecology, P.C.; Mid Town Obstetrics & Gynecology, P.C.; Mile High OB/GYN Associates, P.C.; The OB-GYN Associates Professional Corporation; Rocky Mountain OB-GYN, P.C.; The Women's Health Group, P.C.; and Westside Women's Care, L.L.P.

By the Commission.

Decision and Order

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of respondents named in the caption hereof (“Respondents”), and Respondents having been furnished thereafter with a copy of the draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order to Cease and Desist (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comment received from an interested person pursuant to Section 2.34 of its Rules, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues the following Order:

1. Respondent R.T. Welter and Associates, Inc. is a for-profit corporation, organized, existing, and doing business under

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and by virtue of the laws of the State of Colorado, with its office and principal place of business located at 655 Broadway, Suite 500, Denver, CO 80203.

2. Respondent R. Todd Welter, an individual, is president of R.T. Welter and Associates, Inc. His principal office or place of business is 655 Broadway, Suite 500, Denver, CO 80203.
3. Respondent Cohen and Womack, M.D., P.C. is a professional corporation, organized, existing, and doing business under and by virtue of the laws of the State of Colorado, with its office and principal place of business located at 255 Union Boulevard, Suite 200, Lakewood, CO 80228.
4. Respondent Consultants in Obstetrics and Gynecology, P.C. is a professional corporation, organized, existing, and doing business under and by virtue of the laws of the State of Colorado, with its office and principal place of business located at 4500 East 9th Ave, Suite 300, Denver, CO 80220.
5. Respondent Mid Town Obstetrics & Gynecology, P.C. is a professional corporation, organized, existing, and doing business under and by virtue of the laws of the State of Colorado, with its office and principal place of business located at 2005 Franklin Street, Midtown II, Suite 440, Denver, CO 80205.
6. Respondent Mile High OB/GYN Associates, P.C. is a professional corporation, organized, existing, and doing business under and by virtue of the laws of the State of Colorado, with its office and principal place of business located at 455 South Hudson St., Level 2, Denver, CO 80246.
7. Respondent The OB-GYN Associates, Professional Corporation is a professional corporation, organized, existing, and doing business under and by virtue of the laws of the State of Colorado, with its office and principal place of

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business located at 3773 Cherry Creek North Drive, Suite 100, Denver, CO 80209.

8. Respondent Rocky Mountain OB-GYN, P.C. is a professional corporation, organized, existing, and doing business under and by virtue of the laws of the State of Colorado, with its office and principal place of business located at 4500 East 9th Ave., Suite 200-S, Denver, CO 80220.
9. Respondent The Women's Health Group, P.C. is a professional corporation, organized, existing, and doing business under and by virtue of the laws of the State of Colorado, with its office and principal place of business located at 9195 Grant Street, Suite 300, Thornton, CO 80229.
10. Respondent Westside Women's Care, L.L.P. is a partnership of professional corporations. The partnership is organized, existing, and doing business under and by virtue of the laws of the State of Colorado, with its office and principal place of business located at 7950 Kipling Street, Suite 201, Arvada, CO 80005.
11. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

I.

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

- A. "Respondent RTWA" means Respondent R.T. Welter and Associates, Inc., its officers, directors, employees, agents, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by R.T. Welter and Associates, Inc.

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- B. “Respondent Welter” means R. Todd Welter.
- C. “Respondent Practice Groups” means the following corporations and partnership: Cohen and Womack, M.D., P.C.; Consultants in Obstetrics and Gynecology, P.C.; Mid Town Obstetrics & Gynecology, P.C.; Mile High OB/GYN Associates, P.C.; The OB-GYN Associates, Professional Corporation; Rocky Mountain OB-GYN, P.C.; Westside Women’s Care, L.L.P.; and The Women’s Health Group, P.C. “Respondent Practice Groups” also means the officers, directors, partners, employees, agents, representatives, successors, and assigns of each such corporation and partnership; and the subsidiaries, divisions, groups, and affiliates controlled by each such corporation and partnership.
- D. “Respondents” means Respondent RTWA, Respondent Welter, and the Respondent Practice Groups.
- E. “Medical group practice” means a bona fide, integrated firm in which physicians practice medicine together as partners, shareholders, owners, members, or employees, or in which only one physician practices medicine.
- F. “Participate” in an entity means (1) to be a partner, shareholder, owner, member or employee of such entity, or (2) to provide services, agree to provide services, or offer to provide services, to a payor through such entity. (This definition also applies to all tenses and forms of the word “participate,” including, but not limited to, “participating,” “participated,” and “participation.”)
- G. “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.

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- H. “Person” means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.
- I. “Physician” means a doctor of allopathic medicine (“M.D.”) or a doctor of osteopathic medicine (“D.O.”).
- J. “PIWC Physician or Practice Group” means any physician or medical group practice identified by Respondent Welter as a participant in “Professionals in Women’s Care.”
- K. “Preexisting Contract” means a contract with any payor for the provision of physician services, where
 - 1. at least one Respondent Practice Group, or physician participating in any Respondent Practice Group, is a party to the contract, and
 - 2. the contract was in effect prior to the receipt, by all payors that are parties to such contract, of notice sent pursuant to Paragraph IV.B. of this Order of each such payor’s right to terminate such contract.
- L. “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.
- M. “Qualified clinically-integrated joint arrangement” means an arrangement to provide physician services in which:
 - 1. all physicians who participate in the arrangement participate in active and ongoing programs of the arrangement to evaluate and modify the practice patterns of, and create a high degree of interdependence and cooperation among, the physicians who participate in the arrangement, in order to control costs and ensure the quality of services provided through the arrangement; and

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2. any agreement concerning reimbursement or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies through the joint arrangement.
- N. “Qualified risk-sharing joint arrangement” means an arrangement to provide physician services in which:
1. all physicians who participate in the arrangement share substantial financial risk through their participation in the arrangement and thereby create incentives for the physicians who participate to jointly control costs and improve quality by managing the provision of physician services, such as risk-sharing involving:
 - a. the provision of physician services to payors at a capitated rate,
 - b. the provision of physician services for a predetermined percentage of premium or revenue from payors,
 - c. the use of significant financial incentives (*e.g.*, substantial withholds) for physicians who participate to achieve, as a group, specified cost-containment goals, or
 - d. the provision of a complex or extended course of treatment that requires the substantial coordination of care by physicians in different specialties offering a complementary mix of services, for a fixed, predetermined payment, where the costs of that course of treatment for any individual patient can vary greatly due to the individual patient’s condition, the choice, complexity, or length of treatment, or other factors; and

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2. any agreement concerning reimbursement or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies through the joint arrangement.

II.

IT IS FURTHER ORDERED that Respondents, directly or indirectly, or through any corporate or other device, in connection with the provision of physician services in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, cease and desist from:

- A. Entering into, adhering to, participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding between or among any physicians:
 1. To negotiate on behalf of any physician with any payor,
 2. To deal, refuse to deal, or threaten to refuse to deal with any payor,
 3. Regarding any term, condition, or requirement upon which any physician deals, or is willing to deal, with any payor, including, but not limited to, price terms, or
 4. Not to deal individually with any payor, or to deal with any payor only through an arrangement involving Respondent(s);
- B. Exchanging or facilitating in any manner the exchange or transfer of information among physicians concerning any physician’s willingness to deal with a payor, or the terms or conditions, including price terms, on which the physician is willing to deal;

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- C. Attempting to engage in any action prohibited by Paragraph II.A. or II.B., above; and
- D. Encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any person to engage in any action that would be prohibited by Paragraphs II.A. through II.C. above.

PROVIDED, HOWEVER, that nothing in this Paragraph II shall prohibit any agreement involving or conduct by:

- (i) Respondent RTWA or Respondent Welter that is reasonably necessary to form, participate in, or take any action in furtherance of a qualified risk-sharing joint arrangement or qualified clinically-integrated joint arrangement, or that solely involves physicians in the same medical group practice; or
- (ii) any Respondent Practice Group that is reasonably necessary to form, participate in, or take any action in furtherance of a qualified risk-sharing joint arrangement or qualified clinically-integrated joint arrangement through which it provides physician services, or that solely involves physicians in the same medical group practice.

III.

IT IS FURTHER ORDERED that Respondent RTWA and Respondent Welter, for a period of three (3) years from the date that this order is issued, directly or indirectly, or through any corporate or other device, in connection with the provision of physician services in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, cease and desist from:

- A. Negotiating with any payor on behalf of any PIWC Physician or Practice Group, notwithstanding whether such conduct also violates Paragraph II. of this Order; and

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- B. Advising any PIWC Physician or Practice Group to accept or reject any term, condition, or requirement of dealing with any payor, notwithstanding whether such conduct also violates Paragraph II. of this Order.

IV.

IT IS FURTHER ORDERED that Respondent RTWA shall:

- A. Within thirty (30) days after the date on which this Order is issued, send by first-class mail a copy of this Order and the Complaint to:
 - 1. each PIWC Physician or Practice Group; and
 - 2. each employee of Respondent RTWA.
- B. Within thirty (30) days after the date on which this Order is issued, send copies of this Order, the Complaint, and the notice specified in Appendix B to this Order, by first class mail return receipt requested, to the chief executive officer of each payor that
 - 1. is listed in Appendix A, or
 - 2. engaged in negotiations with any Respondent Practice Group for a contract for the provision of physician services, where the Respondent Practice Group was represented by Respondent RTWA or Respondent Welter in such negotiations;
- C. For a period of three (3) years after the date this Order is issued, distribute by first-class mail a copy of this Order and the Complaint to:
 - 1. each physician, medical group practice, and other group of physicians that Respondent RTWA represents for the purpose of contracting, or seeking to contract, with payors

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for the provision of physician services, or that Respondent RTWA advises with regard to its dealings with payors in connection with the provision of physician services, within (30) days of the time that Respondent RTWA begins providing such representation or advice, unless such physician or physician group previously received a copy of this Order and the Complaint from Respondent RTWA or Respondent Welter;

2. each payor with which Respondent RTWA deals, or has dealt, for the purpose of contracting, or seeking to contract, while representing any physician or any group of physicians, or while advising any physician or group of physicians with regard to their dealings regarding contracting with such payor for the provision of physician services, within thirty (30) days of such dealing, unless such payor previously received a copy of this Order and the Complaint from Respondent RTWA or Respondent Welter
 3. each employee of Respondent RTWA within (30) days of the time that their employment with Respondent RTWA commences;
- D. Notify the Commission at least thirty (30) days prior to any proposed change in Respondent RTWA, such as dissolution, assignment, sale resulting in the emergence of a successor company or corporation, the creation or dissolution of subsidiaries, or any other change in Respondent RTWA that may affect compliance obligations arising out of this Order; and
- E. File verified written reports within sixty (60) days after the date this Order is issued, annually thereafter for three (3) years on the anniversary of the date this Order is issued, and at such other times as the Commission may by written notice require, setting forth, in detail, the manner and form in which

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Respondent RTWA has complied and is complying with this Order.

V.

IT IS FURTHER ORDERED that Respondent Welter shall:

- A. For a period of three (3) years after the date this Order is issued, distribute by first-class mail a copy of this Order and the Complaint to:
 - 1. each physician, medical group practice, and other group of physicians that Respondent Welter represents for the purpose of contracting, or seeking to contract, with payors for the provision of physician services, or that Respondent Welter advises with regard to its dealings with payors in connection with the provision of physician services, within (30) days of the time that Respondent Welter begins providing such representation or advice, unless such physician or physician group previously received a copy of this Order and the Complaint from Respondent RTWA or Respondent Welter;
 - 2. each payor with which Respondent Welter deals, or has dealt, for the purpose of contracting, or seeking to contract, while representing any physician or any group of physicians, or while advising any physician or group of physicians with regard to their dealings regarding contracting with such payor for the provision of physician services, within thirty (30) days of such dealing, unless such payor previously received a copy of this Order and the Complaint from Respondent RTWA or Respondent Welter; and
- B. File verified written reports within sixty (60) days after the date this Order is issued, annually thereafter for three (3) years on the anniversary of the date this Order is issued, and at such other times as the Commission may by written notice

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require, setting forth, in detail, the manner and form in which Respondent Welter has complied and is complying with this Order.

VI.

IT IS FURTHER ORDERED that each Respondent Practice Group shall:

- A. Terminate, without penalty or charge, in accordance with applicable state law, any Preexisting Contract negotiated on behalf of the Respondent Practice Group by Respondent RTWA or Respondent Welter with any payor, upon receipt by the Respondent Practice Group of a written request to terminate such contract from any payor that is a party to the contract or that pays for physician services provided through the contract;
- B. File verified written reports within sixty (60) days after the date this Order is issued, annually thereafter for three (3) years on the anniversary of the date this Order is issued, and at such other times as the Commission may by written notice require, setting forth, in detail, the manner and form in which the Respondent Practice Group has complied and is complying with this Order; and
- C. Notify the Commission at least thirty (30) days prior to any proposed change in any Respondent Practice Group, such as dissolution, assignment, or sale resulting in the emergence of a successor company or corporation, the creation or dissolution of subsidiaries, or any other change in the Respondent Practice Group that may affect compliance obligations arising out of this Order.

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VII.

IT IS FURTHER ORDERED that each Respondent shall notify the Commission of any change in its Principal Address within twenty (20) days of such change in address.

VIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, calendars, and other records and documents in their possession, or under their control, relating to any matter contained in this Order;
- B. Upon five (5) days' notice to Respondent RTWA, and without restraint or interference from it, to interview officers, directors, or employees of Respondent RTWA in the presence of counsel for such officers, directors, or employees;
- C. Upon five (5) days' notice to Respondent Welter, to interview Respondent Welter or, without restraint or interference from Respondent Welter, to interview employees of Respondent Welter in the presence of counsel for such employees; and
- D. Upon five (5) days' notice to any Respondent Practice Group and without restraint or interference from such Respondent, to interview such Respondent or the officers, directors, partners, or employees of such Respondent in the presence of counsel for such officers, directors, partners, or employees.

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IX.

IT IS FURTHER ORDERED that this Order shall terminate on October 8, 2022.

Appendix A

Aetna US Healthcare of Colorado
Anthem Blue Cross Blue Shield of Colorado
CIGNA HealthCare of Colorado
Community Health Plan of the Rockies
Humana Health Plan
Mountain Medical Affiliates, Inc.
OneHealth Plan
PacifiCare of Colorado
Patient Choice Healthcare of Colorado
United Health Care of Colorado

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Appendix B

[letterhead of Respondent RTWA]

[name of payor's CEO]
[address]

Dear _____:

Enclosed is a copy of a Complaint and a Consent Order issued by the Federal Trade Commission against R.T. Welter and Associates, Inc., and others. I call to your attention Paragraph VI.A. of the Order, which gives you the right to terminate, without penalty or charge, in accordance with applicable state law, any preexisting contract negotiated on behalf of any Respondent Practice Group by R.T. Welter and Associates, Inc. or R. Todd Welter for the provision of physician services. If you choose to exercise your right to terminate any such contract, you will need to send the notice of termination, by first class mail return receipt requested, to the person(s) or entit(ies) named in the contract.

Sincerely,

Analysis

**Analysis of Agreement Containing Consent Order to Aid
Public Comment**

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order with R.T. Welter and Associates, Inc. (“RTWA”), R. Todd Welter, and the following medical group practices (hereinafter “Respondent Practice Groups”): Cohen and Womack, M.D., P.C.; Consultants in Obstetrics and Gynecology, P.C.; Mid Town Obstetrics & Gynecology, P.C.; Mile High OB/GYN Associates, P.C.; The OB-GYN Associates Professional Corporation; Rocky Mountain OB-GYN, P.C.; Westside Women’s Care, L.L.P.; and The Women’s Health Group, P.C. Mr. Welter, RTWA and the Respondent Practice groups are collectively referred to as “Respondents.” The agreement settles charges that Respondents violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, by facilitating and implementing agreements among the obstetricians and gynecologists represented by Mr. Welter to fix prices and other terms of dealing with health insurance firms and other third-party payors (hereinafter, “payors”), and to refuse to deal with payors except on collectively determined terms. The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify their terms in any way. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by any Respondent that said Respondent violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

Analysis

The Complaint

The allegations in the Commission's proposed complaint are summarized below.

Mr. Welter is a non-physician consultant who, through his company RTWA, organized approximately 88 physicians specializing in obstetrics and gynecology ("OB/GYNs") into a concerted group for the purpose of negotiating as a bloc with payors over contract terms. Respondents called their group "Professionals in Women's Care" ("PIWC"). About half of PIWC's physicians practice medicine through one of the eight Respondent Practice Groups, all but one of which are corporations (the other is a partnership), consisting of OB/GYNs practicing medicine. Except to the extent that competition has been restrained in the manner set forth in the proposed Complaint, the Respondent Practice Groups and other physicians who participated in PIWC compete with each other in the provision of OB/GYN services in the Denver, Colorado metropolitan area.

PIWC came together in 1999 in response to a proposed contract that PacifiCare Health Systems of Colorado ("PacifiCare"), a payor doing business in the Denver area, offered to OB/GYNs in the region. The Respondent Practice Groups opposed the fees and other provisions contained in PacifiCare's offer, and convened a meeting among all of them to discuss strategies for resisting PacifiCare's terms and forcing it to offer a contract that was more lucrative for the physicians. The Respondent Practice Groups retained Mr. Welter to negotiate a different contract on their collective behalf with PacifiCare.

PIWC became a vehicle for the OB/GYNs to use their collective bargaining power to negotiate for higher fees and other, more advantageous terms in contracts with payors than they could have obtained by negotiating unilaterally. The Respondent Practice Groups formed a "Steering Committee" among themselves to determine contract strategy and give instruction and guidance to Mr. Welter in his dealings with payors over contract

Analysis

terms. Mr. Welter and the Respondent Practice Groups also recruited additional OB/GYNs into PIWC - bringing its total membership to more than 80 physicians.

The PIWC physicians authorized Mr. Welter to advise PacifiCare that they rejected its latest contract offer. Mr. Welter told PacifiCare, among other things, that the physicians had joined together to secure higher fees, that they refused to sign a contract without those fees, and that the physicians would negotiate only through him. To be competitively marketable to employers and other purchasers in the Denver metropolitan area, a payor must include in its network of participating physicians a large number of OB/GYNs. Faced with the prospect of having no contracts with the OB/GYNs involved in PIWC, PacifiCare agreed to the terms that Mr. Welter and the PIWC physicians demanded.

Mr. Welter and Respondent Practice Groups, through PIWC, exploited their collective bargaining strength in contract negotiations with several other payors as well. In some cases, at the urging of Mr. Welter, large numbers of PIWC physicians sent contract termination notices to payors that refused to negotiate with Mr. Welter or that resisted the fee increases he demanded on their behalf. Faced with the threat of a boycott and the inability to include this large group of OB/GYNs in their networks of participating physicians, these payors ultimately acceded to Mr. Welter's demands for the PIWC physicians. In these ways, the PIWC physicians received contract terms that were more economically advantageous to them than they could have obtained by negotiating individually rather than collectively. They also received fees that were higher than those that payors were paying to other OB/GYNs in the Denver metropolitan area.

Sometimes a network of competing physicians uses an agent to convey to payors information obtained individually from the physicians about fees or other significant contract terms that they are willing to accept. The agent may also convey to the physicians all payor contract offers, which the physicians then unilaterally decide whether to accept or reject. Such a "messenger

Analysis

model” arrangement, which 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 (*see* <http://www.ftc.gov/reports/hlth3s.htm>.), can facilitate and minimize the costs involved in contracting between physicians and payors, without fostering an agreement among competing physicians on fees or fee-related terms. Such a messenger may not, however, consistent with a competitive model, negotiate fees and other competitively significant terms on behalf of the participating physicians, or facilitate the physicians’ coordinated responses to contract offers by, for example, electing not to convey a payor’s offer to the physicians based on the messenger’s opinion on the appropriateness, or lack thereof, of the offer.

Mr. Welter purported to operate as a messenger, but, in practice, he did not do so. Rather, Mr. Welter used the information he gathered from the PIWC participants, including Respondent Practice Groups, to negotiate fees and other competitively significant terms on the PIWC participants’ collective behalf. Mr. Welter, with the Steering Committee’s concurrence, would not convey a contract offer to the group of PIWC physicians if he believed that the contract’s terms were deficient.

Mr. Welter and the Respondent Practice Groups solicited *de facto* exclusivity to increase PIWC’s collective bargaining power with payors. They persuaded PIWC physicians to terminate affiliations with professional organizations such as independent practice associations and practice management groups to force payors that wanted contracts with the PIWC physicians to deal with Mr. Welter.

Respondents’ joint negotiation of fees and other competitively significant terms has not been reasonably related to any efficiency-enhancing integration. PIWC participants did not accept any form of financial risk-sharing, through arrangements such as capitation or fee withholds, and they have not clinically integrated their practices to create sufficiently substantial potential efficiencies.

Analysis

Respondents' actions have restrained price and other forms of competition among the PIWC participants, caused fees for obstetrical and gynecological services to rise, and harmed consumers, including payors, employers, and individual patients.

The Proposed Consent Order

The proposed order is designed to prevent recurrence of these illegal concerted actions, while allowing Respondents to engage in legitimate conduct that does not impair competition. The proposed order's core prohibitions are contained in Paragraphs II. and III.

Paragraph II. is intended to prevent the Respondents from participating in, or creating, future unlawful physician agreements.

Paragraph II.A. prohibits RTWA, Mr. Welter, and Respondent Practice Groups 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 the Respondents.

Paragraph II.B. prohibits these Respondents from facilitating exchanges of information between physicians concerning whether, or on what terms, to contract with a payor. Paragraph II.C. prohibits them from attempting to engage in any action prohibited by Paragraph II.A. or II.B. Paragraph II.D. prohibits them from inducing anyone to engage in any action prohibited by Paragraphs II.A. through II.C.

Paragraph II. also contains two provisos intended to clarify certain types of agreements that Paragraph II. does not prohibit. The first proviso applies to RTWA and Mr. Welter, and the second to the Respondent Practice Groups. Each provides that nothing in Paragraph II. prohibits the applicable Respondent from engaging in conduct that is reasonably necessary to form, participate in, or act in furtherance of, a "qualified risk-sharing

Analysis

joint arrangement” or a “qualified clinically-integrated joint arrangement.”

As defined in the proposed order, a “qualified risk-sharing joint arrangement” must satisfy two conditions. First, all physician participants must share substantial financial risk through the arrangement and thereby create incentives for the physician participants jointly to control costs and improve quality by managing the provision of services. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement. The definition of financial risk-sharing tracks the discussion of that term contained in the Health Care Statements.

As defined in the proposed order, a “qualified clinically-integrated joint arrangement” also must satisfy two conditions. First, all physician participants must participate in active and ongoing programs to evaluate and modify their clinical practice patterns, creating a high degree of interdependence and cooperation among physicians, in order to control costs and ensure the quality of services provided. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement. This definition also reflects the analysis contained in the Health Care Statements.

Paragraph II.’s provisos also provide that Paragraph II. does not prohibit the Respondents from facilitating an agreement solely between physicians who are part of the same medical group practice. The proposed order defines such a practice as a bona fide, integrated firm in which physicians practice medicine together as partners, shareholders, owners, members, or employees, or in which only one physician practices medicine.

Paragraph III. prohibits RTWA and Mr. Welter, for a period of three years, from negotiating with any payor on behalf of any PIWC physician, and from advising any PIWC physician to accept

Analysis

or reject any term, condition, or requirement of dealing with any payor.

Mr. Welter is not prohibited from performing legitimate “messenger” services, including with respect to PIWC physicians. As noted above, a properly constituted messenger can efficiently facilitate the establishment of physician-payor contracts and avoid fostering unlawful agreements among the participating physicians. As set forth in the proposed complaint, however, while Mr. Welter purported to operate as a legitimate messenger, in practice he fostered anticompetitive physician agreements by negotiating directly with payors for higher fees on behalf of all PIWC participants, and by advising the PIWC participants collectively to reject various payor offers and to engage in concerted refusals to deal. For this reason, Paragraph III. is a necessary and appropriate supplement to Paragraph II.’s provisions. Under the proposed order, Mr. Welter may serve as a messenger for PIWC physicians, but, pursuant to Paragraph III., may not negotiate for or advise any PIWC physician with respect to payor contracts.

Paragraphs IV.A. and IV.B. require RTWA to distribute the complaint and order to all physicians who participated in PIWC and to the payors that negotiated contracts with RTWA or Mr. Welter on behalf of any Respondent Practice Group. Paragraph VI.A. requires Respondent Practice Groups to terminate, without penalty, at any payor’s request, current contracts, with respect to providing physician services, negotiated by Mr. Welter with payors. This provision is intended to eliminate the effects of Respondents’ anticompetitive concerted actions.

The remaining provisions of Paragraphs IV. through VIII. of the proposed order impose obligations on Respondents with respect to distributing the proposed complaint and order to various persons and reporting information to the Commission. For example, Paragraph IV.C. and V.A. require RTWA and Mr. Welter, respectively, to distribute copies of the complaint and order to the physicians on whose behalf they negotiate payor contracts, and to those payors. Paragraphs IV.E., V.B., and VI.B.

Analysis

require the Respondents to file periodic reports with the Commission detailing how the Respondents have complied with the order. Paragraph VIII. authorizes Commission staff to obtain access to Respondents' records and officers, directors, partners, and employees for the purpose of determining or securing compliance with the order.

The proposed order will expire in 20 years.

Complaint

IN THE MATTER OF

**TIM R. WOFFORD, INDIVIDUALLY AND AS AN
OFFICER OF OKIE CORPORATION**

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-4061; File No. 0123191
Complaint, October 8, 2002--Decision, October 8, 2002*

This consent order addresses cash rebate offers made by OKie Corporation, and by Respondent Tim R. Wofford, an officer of the corporation – who advertised, labeled, offered for sale, sold, and distributed computer peripheral products to the public, including modems, CD-Rom drive kits, and recordable compact disks – to consumers who purchased their computer peripheral products. The order, among other things, prohibits the respondent from failing to disclose all terms, conditions, or other limitations of a rebate offer on the rebate form. The order also requires the respondent to disclose in any rebate advertising that the rebate offer requires consumers to disclose a fax number and/or email address on their rebate form if such is the case. In addition, the order prohibits the respondent from misrepresenting the time in which any cash rebate, or rebate in the form of credit towards future purchases, will be mailed to consumers; from failing to provide such rebates within the time specified, or if no time is specified, within thirty days; and from violating any provision of the Mail or Telephone Order Rule in connection with rebates in the form of merchandise. The order also prohibits the respondent from failing to provide rebates in the form of services or any other consideration (other than cash, credit towards future purchases, or merchandise) within the time he specifies for delivery, or if no time is specified, within thirty days, unless he offers consumers the option of consenting to a delay or canceling the rebate request and promptly receiving reasonable cash compensation instead of the rebate originally offered.

Participants

For the Commission: *Kerry O'Brien, Linda K. Badger, Erika Wodinsky, and Jeffrey Klurfeld.*

For the Respondent: *John Cullen.*