

## Complaint

## IN THE MATTER OF

**INDEPENDENT PHYSICIAN ASSOCIATES  
MEDICAL GROUP, INC.,  
DBA ALLCARE IPA****CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS  
OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT***Docket C-4245; File No. 061 0258**Complaint, February 2, 2009 – Decision, February 2, 2009*

This consent order addresses horizontal agreements among competing physicians, acting through Independent Physician Associates Medical Group, Inc., dba AllCare IPA, to fix prices charged to those offering coverage for health care services (“payors”) and to refuse to deal with payors. The order prohibits the respondent from entering into or facilitating agreements between or among any health care providers (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, (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 not to deal with any payor except through AllCare. The order does not preclude AllCare from engaging in conduct reasonably necessary to form or participate in legitimate “qualified risk-sharing” or “qualified clinically integrated” joint arrangements, and does not bar agreements that only involve physicians who are part of the same medical group practice. AllCare is required to notify the Commission before it initiates any arrangement to act as an agent or messenger with respect to physician contracting with payors. The order further requires AllCare to send a copy of the complaint and consent order to its physician members, its management and staff, and any payors who communicated with AllCare, or with whom AllCare communicated, with regard to any interest in contracting for physician services, as well as to each physician who begins participating in each group; each payor who contacts each group regarding the provision of physician services; and each person who becomes an officer, director, manager, or employee for three years after the date on which the order becomes final. AllCare must also publish a copy of the complaint and consent order, for three years, in any official publication that it sends to its participating physicians. In addition, the order requires AllCare to terminate preexisting payor contracts held by physicians who were AllCare participants since January 1, 2005, upon receipt by AllCare of a written request for termination by relevant payors, or the termination date, renewal date, or anniversary date of the contract, whichever is earlier. AllCare is also required to send a copy of any payor’s request for termination to every physician who participates in each group. Additional

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provisions require the respondent to provide to the Commission information to assist in the monitoring of its compliance with the order.

*Participants*

For the *Commission*: *Kerry O’Brien and John Wiegand.*

For the *Respondent*: *Richard A. Feinstein, Boies, Schiller & Flexner LLP.*

**COMPLAINT**

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et seq.* (“FTC Act”), and by virtue of the authority vested in it by said Act, the Federal Trade Commission (“Commission”), having reason to believe that Independent Physician Associates Medical Group, Inc., dba AllCare IPA (“AllCare”), herein sometimes referred to as “Respondent,” has violated Section 5 of the FTC 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:

**NATURE OF THE CASE**

1. This matter concerns horizontal agreements among competing physicians, acting through Respondent, to fix prices charged to those offering coverage for health care services (“payors”) in the Modesto, California, area and to refuse to deal with payors.

**RESPONDENT**

2. AllCare, an independent practice association (“IPA”), is a for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal place of business located at 3340 Tully Rd., Suite B-4, Modesto, CA 95350. AllCare consists of multiple, independent medical practices

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with a total of approximately 500 physician members, of which approximately 200 are devoted to primary care.

### **THE FTC HAS JURISDICTION OVER RESPONDENT**

3. At all times relevant to this Complaint, Respondent has been engaged in the business of negotiating or attempting to negotiate contracts with payors for the provision of physician services on behalf, and for the pecuniary benefit, of its members.

4. Except to the extent that competition has been restrained as alleged herein, AllCare's physician members have been, and are now, in competition with each other for the provision of physician services in the Modesto 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 PAYORS**

7. Individual physicians and physician group practices contract with payors 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 payors' subscribers or covered employees and dependents. Physicians and physician group practices entering into such contracts often agree to accept lower compensation from payors in order to obtain access to additional patients made available by the payors' relationship with the covered individuals. These contracts may reduce payors' costs

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and enable them to lower the price of insurance or of providing health benefits, thereby resulting in lower medical costs for covered individuals.

8. Physicians and physician group practices sometimes form or participate in financially integrated joint ventures to provide physician services under agreements with payors willingly seeking such arrangements. Under such arrangements, the physicians and physician group practices may share financial risks and rewards in several ways. For example, the physicians may provide services at a “capitated” rate or share rewards/penalties based on their collective success in achieving pre-established targets or goals regarding aggregate utilization and costs of the services provided to covered individuals. Physicians may also participate in clinically integrated joint ventures implementing an active and ongoing program to evaluate and modify practice patterns by the network’s physician participants and create a high degree of interdependence and cooperation among the physicians to control costs and ensure quality.

9. Other than through their participation in integrated joint ventures, and absent anticompetitive agreements among them, otherwise competing physicians and physician group practices unilaterally decide whether to enter into contracts with payors to provide services to individuals covered by a payor’s programs, and what prices they will accept as payment for their services pursuant to such contracts.

**RESPONDENT’S OPERATION**

10. Since its formation, AllCare has entered into contracts with payors for and on behalf of its respective physician members, under which AllCare received capitated payments from the payors in exchange for the medical practices’ agreement to provide their professional medical services to patients covered by the contracting payors. The capitated contracts provided to payors, in addition to the physician services, an insurance guarantee component that all covered physician services needed by patients covered under a

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payor's program would be provided by AllCare's physician members for the predetermined capitation charge, regardless of the actual quantity or type of services needed and provided.

11. The member physicians participation in AllCare, and their offering of services through AllCare's capitated contracts, was not, however, the member physicians' exclusive or even primary method of selling their professional medical services. Rather, the member physicians also continued to sell their medical services individually, on a fee-for-service basis, outside of AllCare, to individual patients and through contracts individually and directly entered into with payors.

### ANTICOMPETITIVE CONDUCT

12. Since at least 2005, AllCare, acting as a combination of its physician members, and in conspiracy with its members, has acted to restrain competition on fee-for-service contracts by, among other things, facilitating, entering into, and implementing agreements, express or implied, to fix the prices and other terms at which they would contract with payors; to engage in collective negotiations over terms and conditions of dealing with payors; and to have AllCare members refrain from negotiating individually with payors or contracting on terms other than those approved by AllCare.

13. Since at least 2005, AllCare has engaged in contract talks with payors regarding the payors' offers of fee-for-service contracts. Those talks included negotiations over price and other terms that AllCare would present to its physician members.

14. To enforce these joint negotiation efforts, a significant number of AllCare physicians sent at least one payor the same form termination letter. In those letters, the physicians terminated their individual agreements with the payor "with the exception of [their] participation through the agreement with AllCare IPA." Each letter stressed that "I enjoy my relationship with [the payor's] members and wish to continue that relationship, but only through AllCare IPA."

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**RESPONDENT'S CONDUCT IS NOT LEGALLY  
JUSTIFIED**

15. Respondent's joint refusal to deal and 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 AllCare.

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

16. Respondent's actions described in Paragraphs 12 through 14 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 Modesto area in the following ways, among others:

- a. unreasonably restraining price and other forms of competition among physicians who are members of AllCare;
- b. increasing prices for physician services;
- c. depriving payors, including insurers and employers, and individual consumers, of the benefits of competition among physicians; and
- d. depriving consumers of the benefits of competition among payors.

17. 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.

## Decision and Order

**WHEREFORE, THE PREMISES CONSIDERED,** the Federal Trade Commission on this second day of February, 2009, issues its Complaint against Respondent AllCare.

By the Commission.

**DECISION AND ORDER**

The Federal Trade Commission (“Commission”), having initiated an investigation of certain acts and practices of Independent Physician Associates Medical Group, Inc., dba AllCare IPA (“AllCare”), herein sometimes 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 consideration and which, if issued, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act (“Act”), as amended, 15 U.S.C. § 45; and

Respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order to Cease and Desist (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent 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 Respondent has violated the Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent

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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, 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 AllCare is a for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal place of business located at 3340 Tully Rd., Suite B-4, Modesto, CA 95350.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and this proceeding is in the public interest.

**ORDER****I.**

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

- A. “Respondent” means Independent Physician Associates Medical Group, Inc., dba AllCare IPA, 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, members, or employees, or in which only one Physician practices medicine.
- C. “Participate” in an entity means (1) to be a partner, shareholder, owner, member, or employee of such entity, or

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(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.”

- D. “Payor” means any Person that pays, or arranges for the 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.
- E. “Person” means both natural Persons and artificial Persons, including, but not limited to, corporations, unincorporated entities, and governments.
- F. “Physician” means a doctor of allopathic medicine (“M.D.”) or a doctor of osteopathic medicine (“D.O.”).
- G. “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 AllCare pursuant to Paragraph V.A.2 of this Order of such payor’s right to terminate such contract.
- H. “Principal Address” means either (1) the primary business address, if there is a business address, or (2) the primary residential address, if there is no business address.
- I. “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

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quality of services provided through the arrangement;  
and

2. any agreement concerning price or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies that result from such integration through the arrangement.
- J. “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 jointly to control costs and improve quality by managing the provision of Physician services such as risk-sharing involving:
    - a. the provision of Physician services at a capitated rate,
    - b. the provision of Physician services for a pre-determined 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 price, when the costs of that course of treatment for any individual patient can vary greatly due to the individual patient’s condition, the choice,

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complexity, or length of treatment, or other factors;  
and

2. any agreement concerning price or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies that result from such integration through the arrangement.

K. “Qualified Arrangement” means a Qualified Clinically-integrated Joint Arrangement or a Qualified Risk-sharing 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 with respect to their provision of Physician services:
  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 not to deal with any Payor other than through Respondent;

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- 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 with a Payor;
- C. Attempting to engage in any action prohibited by Paragraphs 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 or conduct involving Respondent that, subject to the requirements of Paragraph IV of this Order, is reasonably necessary to form, Participate in, or take any action in furtherance of, a Qualified Risk-sharing Joint Arrangement or a Qualified Clinically-integrated Joint Arrangement.

**III.**

**IT IS FURTHER ORDERED** that, for three (3) years after the date this Order becomes final, for any arrangement under which Respondent would act as an agent, or as a messenger, on behalf of any Physician or any Medical Group Practice with any Payor regarding contracts, except for those contracts under which Respondent is, or will be, paid on a capitated (per member per month) rate by the Payor, Respondent shall notify the Commission in writing ("Paragraph III Notification") at least sixty (60) days prior to entering into the arrangement for which Paragraph III Notification is required. The Paragraph III Notification shall include the number of proposed Physician Participants in the proposed arrangement; the proposed geographic area in which the proposed arrangement would operate; a copy of any proposed Physician Participation agreement; a description of the proposed arrangement's purpose and function; a description of any resulting efficiencies expected to be obtained through the proposed arrangement; and a description of procedures

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to be implemented to limit possible anticompetitive effects of the proposed arrangement, such as those prohibited by this Order.

*Provided however, that:*

- (a) if, within fifteen (15) days from the date of the Commission's receipt of the Paragraph Notification, a representative of the Commission makes a written request for additional information, then Respondent shall not enter into the arrangement described in the Paragraph III Notification 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.

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**IV.**

**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, except for those contracts under which Respondent is, or will be, paid on a capitated (per member per month) rate by the Payor, (“Paragraph IV Arrangement”), Respondent shall notify the Commission in writing (“Paragraph IV 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 Arrangement relating to price terms or conditions of dealing with any Payor; or
- B. Contacting a payor, pursuant to an 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 Arrangement.

*Provided further* Paragraph IV Notification shall include the following information regarding the Arrangement pursuant to which Respondent intends to engage in the above identified conduct:

- a. the total number of Physicians and the number of Physicians in each specialty Participating in the Arrangement;
- b. a description of the Arrangement, including its purpose and geographic area of operation;
- c. a description of the nature and extent of the integration and the efficiencies resulting from the Arrangement;
- d. an explanation of the relationship of any agreement on prices, or contract terms related to price, to furthering the integration and achieving the efficiencies of the Arrangement;

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- e. a description of any procedures proposed to be implemented to limit possible anticompetitive effects resulting from the Arrangement or its activities; and
- f. All studies, analyses, and reports that were prepared for the purpose of evaluating or analyzing competition for Physician services in any relevant market, including, but not limited to, the market share of Physician services in any relevant market.

*Provided further that:*

- (a) if, within sixty (60) days from the Commission's receipt of the Paragraph IV Notification, a representative of the Commission makes a written request to Respondent for additional information, then Respondent shall not Participate in any arrangement described in Paragraph IV.A or Paragraph IV.B of this Order prior to the expiration of thirty (30) days after substantially complying with such request for additional information, 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;

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

**V.**

**IT IS FURTHER ORDERED** that Respondent shall:

- A. Within thirty (30) days after the date on which this Order becomes final:
  - 1. send by first-class mail with delivery confirmation or return receipt requested, or electronic mail with return confirmation, a copy of this Order and the Complaint to:
    - a. every Physician who Participates, or has Participated, in Respondent at any time since January 1, 2005; and
    - b. each current officer, director, manager, and employee of Respondent; and
  - 2. send by first-class mail, return receipt requested, a copy of this Order, the Complaint, and the letter attached as Appendix A to this Order to the chief executive officer of each payor that has contracted with Respondent for the provision of Physician services at any time since January 1, 2005 regarding contracting for the provision of Physician services, except for those contracts under which Respondent is, or will be, paid a capitated (per member per month) rate by the Payor;

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- B. Terminate, without penalty or charge, and in compliance with any applicable laws, any Preexisting Contract with any Payor who is sent the letter required by Paragraph V.A.2 of this Order, at the earlier of: (1) receipt by Respondent AllCare 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 for Physician services 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 AllCare 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 AllCare 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 V.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 V.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 AllCare receives such request to terminate.
- 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:

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- 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, except for those payors who contract with Respondent solely for Physician services that are, or will be, paid on a capitated (per member per month) rate by the Payor, 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 with Respondent; and
2. Annually publish in an official annual 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.
- E. File verified written reports within sixty (60) days from the date this Order becomes final, annually thereafter for three (3) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may by written notice require. Each report shall include:
1. a detailed description of the manner and form in which the Respondent has complied and is complying with this Order;

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2. the name, address, and telephone number of each payor with which the Respondent has had any contact, except for payors whose sole contacts with Respondent relate to contracts under which Respondent is, or will be, paid a capitated (per member per month) rate by the Payor; and
3. copies of the delivery confirmations, signed return receipts, or electronic mail with return confirmations required by Paragraph V.A.1, and copies of the signed return receipts required by Paragraphs V.A.2 and V.C.

**VI.**

**IT IS FURTHER ORDERED** that Respondent shall notify the Commission:

- A. of any change in its Principal Address within twenty (20) days of such change in address; and
- B. at least thirty (30) days prior to any proposed: (1) dissolution of Respondent; (2) acquisition, merger, or consolidation of Respondent; or (3) any other change in Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

**VII.**

**IT IS FURTHER ORDERED** that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondent, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. access, during office hours of Respondent, and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence,

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memoranda, and all other records and documents in the possession, or under the control, of Respondent relating to compliance with this Order, which copying services shall be provided by Respondent at its expense; and

- B. to interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

**VIII.**

**IT IS FURTHER ORDERED** that this Order shall terminate on February 2, 2029.

By the Commission.

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**Appendix A****Appendix A**

[Respondent's letterhead]

[name of payor's CEO]  
[address]

Dear \_\_\_\_\_:

Enclosed is a copy of a complaint and a consent order ("Order") issued by the Federal Trade Commission against Independent Physician Associates Medical Group, Inc., dba AllCare IPA ("AllCare").

Pursuant to Paragraph V.B of the Order, AllCare must allow you to terminate, upon your written request without any penalty or charge, any contracts with AllCare for the provision of physician services that were in effect prior to your receipt of this letter.

Paragraph V.B of the Order also provides that, if you do not terminate your contract, the contract will terminate at the earlier of [date one year from the date the Order becomes final] or its earliest termination or renewal date (including any automatic renewal date). If the termination or renewal date occurs prior to [date one year from the date the Order becomes final], you may request AllCare to extend that date to a date no later than [date one year from the date the Order becomes final]. If you choose to extend the term of the contract, you may later terminate the contract at any time.

Sincerely,

[AllCare to fill in information in brackets]

## Analysis to Aid Public Comment

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC  
COMMENT**

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed Consent Order with Independent Practice Associates Medical Group, Inc., dba AllCare IPA (“AllCare” or “Respondent”). The agreement settles charges that AllCare violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, by fixing prices charged to those offering coverage for health care services (“payors”) in the Modesto, California, area and refusing to deal with payors. 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 Consent Order final.

The purpose of this analysis is to facilitate public comment on the proposed Consent Order. The analysis is not intended to constitute an official interpretation of the agreement and proposed Consent 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 Respondent that it violated the law or that the facts alleged in the Complaint (other than jurisdictional facts) are true.

**The Complaint’s Allegations**

AllCare is a multi-specialty independent practice association consisting of multiple, independent medical practices with a total of approximately 500 physician members, of which approximately 200 are devoted to primary care, in the Modesto, California, area. Since its formation, AllCare has negotiated contracts with payors under which it has received capitated (per member per month) payments. These contracts shift the risk of patient illness to the IPA by specifying that the health plan will pay the IPA a flat monthly fee for each enrollee, with almost no regard for patient utilization. This type

## Analysis to Aid Public Comment

of contracting is a form of financial integration. The Complaint does not challenge AllCare's activities concerning these contracts.

AllCare and its physicians also contract with Preferred Provider Organizations ("PPOs") to provide fee-for-service medical care. In PPO arrangements, the payor compensates physicians or group practices for services actually rendered pursuant to agreed-upon fee schedules. PPO contracts may or may not entail financial risk-sharing or clinical integration on the part of providers. It is AllCare's negotiation of certain PPO contracts that is the subject of the Commission's Complaint.

The Complaint alleges that AllCare, since at least 2005, has acted to restrain competition on fee-for-service contracts by facilitating, entering into, and implementing agreements to fix the prices and other terms in contracts with PPO payors; to engage in collective negotiations over terms and conditions of dealing with such payors; and to have AllCare members refrain from negotiating individually with such payors or contracting on terms other than those approved by AllCare. The Complaint further alleges that AllCare, to enforce the joint negotiation efforts, caused a significant number of AllCare physicians to send to at least one payor the same form termination letter. These letters terminated the physicians' individual agreements with the payor and affirmed that the physicians would contract with the payor only through an agreement with AllCare.

AllCare did not engage in any activity that might justify collective agreements on the prices its members would accept for their services. The physicians in AllCare, with respect to PPO contracts, do not share any financial risk in providing medical services, do not collaborate in programs to monitor and modify clinical practice patterns to control members' costs and ensure quality, or otherwise integrate their delivery of health care services. The Respondent's actions have restrained price and other forms of competition among physicians in the Modesto, California, area and thereby harmed consumers (including health plans, employers, and individual consumers) by increasing the prices for physician services

## Analysis to Aid Public Comment

**The Proposed Consent Order**

The proposed Consent Order is designed to prevent the continuance and recurrence of the unlawful conduct alleged in the Complaint while allowing AllCare to engage in legitimate, joint conduct. The proposed Consent Order does not affect AllCare's activities in contracting with the payors on a capitated basis.

Paragraph II.A prohibits Respondent from entering into or facilitating agreements between or among any health care providers (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, (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 not to deal with any payor except through AllCare.

The other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits the Respondent from facilitating exchanges of information between health care providers concerning whether, or on what terms, to contract with a payor. Paragraph II.C bars attempts to engage in any action prohibited by Paragraph II.A or II.B, and Paragraph II.D proscribes 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.

As in other Commission orders addressing health care providers' collective bargaining with health care purchasers, certain kinds of agreements are excluded from the general bar on joint negotiations. Paragraph II does not preclude AllCare from engaging in conduct that is reasonably necessary to form or participate in legitimate "qualified risk-sharing" or "qualified clinically-integrated" joint arrangements, as defined in the proposed Consent Order. Also, Paragraph II would not bar agreements that only involve physicians who are part of the same medical group practice, defined in Paragraph I.B, because it is intended to reach agreements between and among independent competitors.

## Analysis to Aid Public Comment

Paragraphs III and IV require AllCare to notify the Commission before it initiates any arrangement to act as an agent or messenger with respect to physician contracting with payors. The Order also would require AllCare to provide to the Commission key details of the arrangement and to delay the implementation of that arrangement to permit further factual discovery by the Commission at its option. Paragraph III applies such requirements to arrangements under which AllCare would be acting as a messenger, and Paragraph IV applies them to arrangements under which AllCare plans to achieve financial or clinical integration.

Paragraph V.A requires AllCare to send a copy of the Complaint and Consent Order to its physician members, its management and staff, and any payors who communicated with AllCare, or with whom AllCare communicated, with regard to any interest in contracting for physician services.

Part V.B. of the Order requires AllCare to terminate preexisting payor contracts held by physicians who were AllCare participants since January 1, 2005, upon (1) receipt by AllCare of a written request for termination by relevant payors, or (2) the termination date, renewal date, or anniversary date of the contract, whichever is earlier. This termination can be delayed for up to one year after the effective date of the Order, upon the written request of the payor. This provision is intended to eliminate the effects of AllCare's joint price setting behavior.

Paragraph V.C requires that AllCare send a copy of any payor's request for termination to every physician who participates in each group. Paragraph V.D contains further notification provisions relating to future contact with physicians, payors, management, and staff. This provision requires AllCare to distribute a copy of the Complaint and Consent Order to each physician who begins participating in each group; each payor who contacts each group regarding the provision of physician services; and each person who becomes an officer, director, manager, or employee for three years after the date on which the Consent Order becomes final. In addition, Paragraph V.D requires AllCare to publish a copy of the

*Analysis to Aid Public Comment*

Complaint and Consent Order, for three years, in any official publication that it sends to its participating physicians.

Paragraphs V.E and VI-VII impose various obligations on AllCare to provide to the Commission information that would assist in the monitoring of Respondent's compliance with the Consent Order.

Pursuant to Paragraph VIII, the proposed Consent Order will expire in 20 years from the date it is issued.

## Complaint

## IN THE MATTER OF

**KING PHARMACEUTICALS, INC.,  
AND  
ALPHARMA INC.****CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS  
OF SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL  
TRADE COMMISSION ACT***Docket C-4246; File No. 081 0240**Complaint, February 2, 2009 – Decision, February 2, 2009*

This consent order addresses the acquisition of Alpharma Inc. by King Pharmaceuticals, Inc. Both companies are engaged in the research, development, manufacture and sale of human pharmaceutical products. The acquisition would eliminate competition in the market for oral long-acting morphine sulfate in which King's Avinza and Alpharma's Kadian compete with each other. The order requires King to divest Kadian to Actavis Elizabeth, L.L.C., or another Commission-approved acquirer. Currently, Actavis manufactures Kadian for Alpharma. With the divestiture, Actavis will continue to sell Kadian in competition with Avinza and other oral long-acting opioids. The assets to be divested include all intellectual property and regulatory approvals, inventory, books and records, marketing materials, and assumed contracts necessary for Actavis to sell Kadian as either a branded or generic product. Because Actavis already manufactures Kadian, no divestiture of fixed assets, interim supply agreement, provision of technical assistance, or asset maintenance order are required. The consent order restricts King's use of confidential business information relating to Kadian. The order provides that the Commission may appoint a divestiture trustee to effectuate such modifications as are necessary to satisfy the requirements of the order. Additionally, the order allows the Commission to appoint an Interim Monitor to ensure the respondents' compliance.

*Participants*

*For the Commission: Sylvia M. Brooks, Leslie Farber, Jacqueline Mendel, Michael R. Moiseyev, Loren Smith, and James Southworth.*

*For the Respondents: Michael McFalls and Philip Proger, Jones Day LLP; and Joseph Tringali, Simpson, Thatcher & Bartlett LLP.*