011 0197

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of	
SPA HEALTH ORGANIZATION, d/b/a SOUTHWEST PHYSICIAN ASSOCIATES,	**Docket No. C-4088**
a corporation.	

COMPLAINT

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 SPA Health Organization ("SPA"), doing business as Southwest Physician Associates (hereinafter "Respondent"), has violated 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:

RESPONDENT

PARAGRAPH 1: Respondent is a non-profit corporation, organized, existing, and doing business under and by virtue of the laws of Texas, with its office and principal place of business at 8150 North Central Expressway, Suite 1250, Dallas, Texas 75206.

JURISDICTION

PARAGRAPH 2: At all times relevant to this Complaint, almost all participating practitioners of Respondent were physicians, most of whom were engaged in the business of providing medical services for a fee. Except to the extent that competition has been restrained as alleged herein, participating physicians of Respondent have been, and are now, in competition with each other for the provision of physician services.

PARAGRAPH 3: The general business practices of Respondent, 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.

PARAGRAPH 4: Respondent has been organized in substantial part, and is engaged in substantial activities, for the pecuniary benefit of its participating physicians and is therefore a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

OVERVIEW OF MARKET AND PHYSICIAN COMPETITION

PARAGRAPH 5: Respondent has approximately 1,000 participating physicians who are licensed to practice medicine in the State of Texas and who are engaged in the business of providing medical services to patients in the eastern part of the Dallas-Fort Worth metropolitan area (hereinafter "Dallas area").

PARAGRAPH 6: Physicians often contract with third-party payors to establish the terms and conditions, including price terms, under which the physicians will render services to the payors' subscribers. Physicians entering into such contracts often agree to lower compensation to obtain access to additional patients made available by the payors' relationship with insureds. These contracts may reduce third-party payors' costs and enable them to lower the price of insurance, and thereby result in lower medical care costs for subscribers to the payors' health insurance plans.

PARAGRAPH 7: 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 8: Medicare's Resource Based Relative Value System (hereinafter "RBRVS") is a system used by the United States Centers for Medicare 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. In general, it is the practice of third-party payors in the Dallas area to make contract offers to individual physicians or groups at a fee level specified in the RBRVS, plus a markup based on some percentage of that fee (*e.g.*, "110% of 2001 RBRVS").

PARAGRAPH 9: To be competitively marketable in the Dallas area, a third-party payor's health insurance plan must include in its physician network a large number of primary care physicians and specialists who practice in the Dallas area. Many of the primary care physicians and specialists who practice in the Dallas area are participating physicians of Respondent.

PARAGRAPH 10: Competing physicians sometimes use a "messenger" to facilitate the establishment of contracts between themselves and third-party 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 third-party payor's offer to them based on the messenger's opinion on the appropriateness, or lack thereof, of the offer.

RESTRAINT OF TRADE

PARAGRAPH 11: Respondent, acting as a combination of competing physicians, has acted to restrain competition by, among other things:

A. facilitating, negotiating, entering into, and implementing agreements among its participating physicians on price and other competitively significant terms;

B. refusing to deal with third-party payors except on collectively agreed-upon terms; and

C. negotiating uniform fees and other competitively significant terms in third-party payor contracts for Respondent's participating physicians, and refusing to submit third-party payor offers to participating physicians that do not conform to Respondent's standards for contracts.

FORMATION AND OPERATION OF SPA

PARAGRAPH 12: In 1984 Respondent's predecessor, Southwest Physician Associates, P.A., undertook to educate and assist physicians in contracting with third-party payors for the provision of physician services. That entity, directly or through other organizations which it controlled, entered into contracting activities on behalf of its participating physicians, often pursuant to arrangements in which the physicians bore some financial risk (*e.g.*, through agreements to provide required medical services in return for a capitated fee). In or about 1997, Southwest Physician Associates, P.A. was merged into SPA Health Organization. The purpose and activities of the successor entity, SPA, remained substantially the same.

PARAGRAPH 13: Respondent's risk contracting resulted in significant losses to its participating physicians. Respondent increasingly undertook, on behalf of its participating physicians, to negotiate non-risk contracts with third-party payors – *i.e.*, contracts that do not involve the sharing of financial risk by third-party payors and physicians through arrangements such as fee withholds or capitation – that provide for higher fees and other, more advantageous terms than its individual participating physicians could obtain by negotiating unilaterally with

third-party payors. By the spring of 2000, Respondent engaged exclusively in non-risk contracting.

PARAGRAPH 14: Physicians seeking to join Respondent apply for membership and, if qualified, are approved for membership by the SPA Board of Directors. Each physician then typically has signed a "Physician Managed Care Agreement" with SPA, authorizing SPA to negotiate non-risk contracts with third-party payors on his or her behalf.

PARAGRAPH 15: Respondent has negotiated with third-party payors the fees and other terms pursuant to which SPA's participating physicians may render medical care to persons covered by the third-party payors. Following acceptance of a contract by Respondent, Respondent has summarized and commented to SPA's participating physicians on the terms of that contract and offered SPA's participating physicians an opportunity to opt in or out of the agreement.

PARAGRAPH 16: Rather than acting simply as a "messenger," as described in Paragraph 10 of this Complaint, Respondent actively bargained with third-party payors, often proposing and counter-proposing fee schedules to be applied, among other terms. To maintain its bargaining power, Respondent has discouraged its participating physicians from entering into unilateral agreements with third-party payors. Respondent has communicated to its participating physicians the general bargaining advantage gained by negotiating with third-party payors collectively through SPA, as well as SPA's determinations that specific fees and other contract terms being offered by third-party payors may be inadequate. Many of Respondent's participating physicians have been unwilling to negotiate with third-party payors apart from SPA, and have communicated that fact to third-party payors seeking to resist SPA's collective demands.

PARAGRAPH 17: Respondent often did not convey to its participating physicians third-party payor offers that SPA deemed deficient, including offers that provided for fees that did not satisfy SPA's Board of Directors. The practice of not conveying third-party payor offers to participating physicians is inconsistent with the messenger model. Respondent instead demanded, and often received, more favorable fee and other contract terms – terms that third-party payors would not have offered to SPA's participating physicians had those physicians engaged in unilateral, rather than collective, negotiations with the third-party payors. Only after the third-party payor acceded to fee and other contract terms acceptable to SPA, would SPA convey the third-party payor's proposed contract to SPA's participating physicians for their consideration.

PARAGRAPH 18: Respondent refused to convey third-party payors' proposed fee and other contract terms to SPA's participating physicians even when the payor explicitly requested that it do so. Respondent's discouragement of its participating physicians' contracting directly with third-party payors and its unwillingness to convey third-party payors' proposed contracts to SPA's participating physicians unless and until those offers satisfy SPA's criteria have rendered it less likely and more costly for third-party payors to establish competitive physician networks in the Dallas area without first coming to terms with SPA. As a result, third-party payors often have offered or acceded to Respondent's

demands for supracompetitive fees for all of SPA's participating physicians.

LACK OF SIGNIFICANT EFFICIENCIES

PARAGRAPH 19: Since March 2000, Respondent has neither sought nor been willing to enter into agreements with third-party payors in which SPA's participating physicians undertake financial risk-sharing. Further, Respondent's participating physicians have not integrated their practices to create significant potential efficiencies. Respondent's joint negotiation of fees and other competitively significant terms has not been, and is not, reasonably related to any efficiency-enhancing integration.

ANTICOMPETITIVE EFFECTS

PARAGRAPH 20: Respondent's actions described in Paragraphs 11 through 18 of this Complaint 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 Dallas area in the following ways, among others:

A. price and other forms of competition among Respondent's participating physicians were unreasonably restrained;

B. prices for physician services were increased; and

C. health plans, employers, and individual consumers were deprived of the benefits of competition among physicians.

PARAGRAPH 21: 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 seventeenth day of July, 2003, issues its Complaint against Respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL