

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
 Pamela Jones Harbour
 Jon Leibowitz
 William E. Kovacic
 J. Thomas Rosch

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In the Matter of)
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COLEGIO DE OPTOMETRAS,)
a professional association,)
)
and)
)
EDGAR DÁVILA GARCIA, O.D., and)
CARLOS RIVERA ALONSO, O.D.,)
individuals.)
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Docket No. C-

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 Colegio de Optometras de Puerto Rico (“Respondent Colegio” or “the Colegio”), Edgar Dávila García (“Respondent Dávila”), and Carlos Rivera Alonso (“Respondent Rivera”) have 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:

NATURE OF THE CASE

1. This matter concerns Respondents’ price-fixing conspiracy and concerted refusal to deal with vision and health plans (collectively, “payors”) as part of a concerted effort among competing optometrists in Puerto Rico to force such plans to, among other things, raise the rates of vision care service reimbursement.

RESPONDENTS

2. Respondent Colegio is a not-for-profit incorporated professional association of optometrists in Puerto Rico, and is organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Puerto Rico, with its principal address at Eleanor Roosevelt Avenue, #118, Hato Rey, Puerto Rico, 00918.

3. Respondent Dávila is an optometrist licensed to practice optometry in Puerto Rico and is engaged in the business of providing vision care services to patients for a fee in Puerto Rico. Respondent Dávila served as the Treasurer of the Colegio from 2002 through 2004; he also served as the head of the Colegio's Health Plans Commission from 2001 through 2004. Respondent Dávila's principal address is Dr. Berrocal & Asociados, 150 De Diego Avenue, Suite 404, Santurce, Puerto Rico, 00907.

4. Respondent Rivera is an optometrist licensed to practice optometry in Puerto Rico and is engaged in the business of providing vision care services to patients for a fee in Puerto Rico. Beginning in 2004, Respondent Rivera served as President Elect of the Colegio; he officially became President in October of 2004. He ceased serving as President in September of 2006. Respondent Rivera's principal address is Centro Visual Juncos, 29 Martinez, Juncos, Puerto Rico, 00777.

JURISDICTION

5. At all times relevant to this complaint, Respondent Colegio existed and operated in substantial part for the pecuniary benefit of its members.

6. Respondents are "persons, partnerships, or corporations" within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

7. Respondents' 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 THE VISION CARE SERVICES MARKET AND OPTOMETRIST COMPETITION

8. Vision care services (including eye examinations) and products (contact lenses and eye glasses) often are offered as part of health benefits packages provided by health plans. These vision care services and products are provided to eligible members and their dependents (collectively, "patients") by optometrists and ophthalmologists. Some health plans contract

directly with such providers, while other health plans also (or alternatively) use vision plans to provide and manage these vision benefits.

9. Approximately 500 optometrists are members of Respondent Colegio, constituting all of the optometrists licensed to practice in Puerto Rico. Membership in the Colegio is required by statute in order to practice optometry in Puerto Rico; the failure to do so will result in the suspension of the optometrist's license to practice.

10. Respondent Colegio has a Board of Directors, elected by the members of the Colegio. The Colegio also has a Health Plans Commission that is responsible for issues relating to payors. The Colegio's enabling statute authorizes the Colegio to serve as a professional association; it does not authorize it to negotiate the reimbursement rates paid to its members by payors.

11. The officers and members of Respondent Colegio engage in the practice of providing optometry services to patients for a fee in Puerto Rico. Except to the extent that competition has been restrained as alleged herein, the members of the Colegio have competed and now are competing among themselves in Puerto Rico.

12. Absent agreements among competing optometrists on the terms, including price, on which they will provide services to patients in health and vision plans, competing optometrists decide individually whether to enter into or remain in contracts with payors, and on the terms and conditions under which they are willing to enter into or remain in such contracts.

ANTICOMPETITIVE CONDUCT

13. Respondent Colegio's member optometrists, including the members of its Board of Directors and Health Plans Commission, represent numerous discrete economic interests. The conduct of the Colegio constitutes combined or concerted action by its member optometrists.

14. As more fully described subsequently, Respondent Colegio, acting as a combination of competing optometrists, and in combination with individual optometrists including Respondents Dávila and Rivera, have restrained competition among its member optometrists by, among other things:

- A. facilitating, negotiating, entering into, and implementing express or implied agreements among its member optometrists on price and other competitively significant terms;
- B. negotiating fees and other competitively significant terms in payor contracts on behalf of the Colegio's members; and

- C. refusing or threatening to refuse to deal with payors except on collectively agreed-upon terms.

15. Respondent Colegio has undertaken these acts and practices with the knowledge of its officers and other member optometrists.

CONDUCT WITH IVISION

16. Since 1997, Ivision International Inc. (“Ivision”) has offered vision care services and products in Puerto Rico. Ivision contracts with Puerto Rico health plans to administer vision plans and provide vision care services and products to covered patients. The health plans pay Ivision on a capitated basis, per individual member. Ivision then contracts with Puerto Rico optometrists to provide these services. By August of 2004, Ivision had almost 130 optometrists—located all over Puerto Rico—in its network, making it very attractive to health plans.

17. Under a typical Ivision plan, specific benefits such as eye examinations, eye glasses and contact lenses are provided to the health plans’ patients. Ivision pays the optometrists in its network a set fee for the provision of different vision care services to each patient. The patient pays a corresponding co-payment for each covered service or product provided. As per Ivision’s agreements with optometrists, the optometrist remits to Ivision the co-payments it receives from the patients. As a result, the fees paid by Ivision to the optometrist are the total net compensation received by the optometrist for treating a patient.

18. Ivision, not the optometrist, also is the entity that “sells” the covered eye wear to the patient. Ivision sends sample frames and lenses on consignment to the optometrists and contracts with a laboratory to ship the finished products to the optometrists for dispensing to patients. Ivision pays the optometrist a fee for the dispensing of the eye wear.

19. The arrangements delineated in paragraphs 16 through 18 typically lead to optometrists, who contract through Ivision, earning less than those contracting directly with health plans; however those optometrists also gain access to numerous patients through Ivision’s plan. Although patients remain free to decline the vision benefit provided by the health plans and to choose uncovered goods or services, because of the tremendous cost advantages, patients often decide to opt for the vision plan and choose covered goods and services.

20. In June and July 2004, Ivision sent out announcements to optometrists regarding its contracts with several new health plans (many of which previously had contracted only directly with optometrists). Ivision scheduled meetings with optometrists to be held that August to discuss the mechanics of implementing these new contracts.

21. Under these new contracts, Ivision paid optometrists the same fees as in its contracts with other health plans. But as a result of Ivision's new affiliations, the optometrists would lose much if not all of their more lucrative direct business with these plans.

22. In early August 2004, Ivision began receiving calls from optometrists, some of whom were Colegio representatives, complaining about the reimbursement structure and rates for the new health plan contracts and threatening that if Ivision did not pay more it would lose optometrists. In addition, as part of a collective effort to force Ivision to raise its reimbursement rates, Colegio representatives and other optometrists contacted additional optometrists and urged them to de-participate from Ivision's network.

23. On August 22, 2004, Ivision met with its providers in Hato-Rey (a suburb of San Juan in the northern part of Puerto Rico). At the beginning of the meeting, only three or four optometrists were present. Twenty minutes later, approximately eighteen cars arrived at the same time. Although none of the late arrivals made explicit reference to an earlier meeting, it was apparent from the optometrists' coordinated attacks on Ivision's rates that communications had taken place among them. In fact, there had been a previous optometrists-only meeting at which a chart comparing Ivision's rates with those of health plans had been distributed.

24. During the meeting with Ivision, the optometrists demanded that Ivision pay them higher reimbursement rates, in the form of one fee for an examination and another fee for refraction, instead of paying a flat fee for both services. The optometrists also complained that Ivision was taking over the role of health plans in Puerto Rico. Respondent Rivera, who was an Ivision provider, stated that he was the President-Elect of the Colegio and that he knew or was familiar with all the optometrists in Puerto Rico. He indicated that as President-Elect of the Colegio he had the authority to meet with Ivision and discuss rates on behalf of the Colegio's members. Respondent Rivera also indicated that if Ivision did not raise reimbursement rates, the Colegio would make sure that Ivision had no providers left in Puerto Rico. In response to Ivision's assertion that it could enlist other providers, Respondent Rivera maintained that he could get to those providers who had not yet joined Ivision and that Ivision would not have any optometrists in its network.

25. One day later, on August 23, 2004, Respondent Dávila circulated a letter on Colegio letterhead addressed to all of the members of the Colegio (all of the optometrists in Puerto Rico) concerning Ivision's new health plan contracts. Respondent Dávila, who was not an Ivision provider, wrote this letter in his capacity as President of the Colegio's Health Plans Commission. In the letter, Respondent Dávila pointed out that Ivision's reimbursement rates represent an exaggerated reduction in the revenues obtained before, and he urged optometrists not to participate in the Ivision network. Respondent Dávila informed the Colegio members that the Colegio was going to develop a policy to be followed with respect to the Ivision plan. He concluded the letter by stating that to continue onward, all of the providers were needed; that this was not a battle that the Colegio could confront alone.

26. Then, on August 25, 2004, two optometrists—a Colegio advisor and a former Colegio officer—met with Ivision representatives and told them that Ivision was going to lose all of its providers and that if it did not pay the providers what they deserved, they would quit. At a later meeting, the same former Colegio officer told Ivision’s President that the providers were really angry and wanted to destroy Ivision. The President also was told that if Ivision agreed to pay \$51 (matching another plan’s fee), the providers would forget Ivision’s other problems and everything would go away.

27. On September 1, 2004, at Respondent Dávila’s instigation, an officer of the Colegio announced an “extraordinary” meeting of the Board of Directors to be held on September 7, 2004. On that same day, Respondent Dávila sent to all Colegio members notice of a September 9, 2004 meeting in Guayanilla and a September 13, 2004 meeting in San Juan. In the notice, he informed the members that they would be meeting to discuss and create policies on how to work with different situations that affect the rendering of their services as health plan providers. He concluded by stressing the importance of attendance—that the members’ ideas and collaboration were needed.

28. On September 7, 2004, the Colegio Board of Directors, including Respondents Dávila and Rivera, held a special meeting to discuss Ivision. That meeting was followed by the September 9, 2004 meeting, at which the Colegio members in attendance, including Respondents Dávila and Rivera, complained about Ivision’s reimbursement structure and discussed the reimbursement chart that had been distributed earlier. As described by one of the attendees: “I was at the meeting in Guayanilla a few months ago. I remember exactly how the I-Vision monopoly was explained and how the optometrists who were present there (some 20) were advised to resign S.T.A.T. (immediately) from I-Vision to let them know that we were not pleased with the contract and that we had to sit down to negotiate, since the contract only benefits I-Vision.”

29. At the September 13, 2004 meeting in San Juan, there were approximately sixty Colegio members in attendance, including Respondents Dávila and Rivera. Respondent Rivera asked for a show of hands as to who was going to remain in the Ivision network. No optometrist raised a hand. In addition, several optometrists voiced complaints about Ivision’s reimbursement rates and discussed leaving Ivision. The chair of one of the Colegio’s committees offered to distribute a sample letter terminating the Ivision contract and circulated a sign-up sheet for those who wanted to receive a copy.

30. At that same meeting, a former officer of the Colegio announced his resignation from Ivision. A few days later, on September 17, 2004, this same optometrist also sent letters to health plans PROgrama de Servicios de Salud de la Asociacion de Maestros (“PROSSAM”), Humana Insurance of Puerto Rico, Inc. (“Humana”) and Preferred Medicare Choice, announcing

that in light of Ivision's reimbursement structure and rates, the optometrists had decided to resign en masse from Ivision, which would cause a great uproar to the plan's subscribers.

31. On October 4, 2004, at the initiation of Respondent Dávila, he and Respondent Rivera, along with an officer and an advisor to the Colegio, met with officials from some of the health plans with which Ivision contracted, PROSSAM, Humana and First Medical. They discussed the Colegio's—and their own—unhappiness with Ivision's rates, as well as those rates being paid to those optometrists who still had direct contracts with the health plans. The Colegio representatives then requested that the health plans pay optometrists higher fees. They also asked the health plan officials to put pressure on Ivision, and informed them that providers were not going to remain in the Ivision network if the reimbursement rates did not increase.

32. By October 15, 2004, almost 40 Colegio members had left the Ivision network. These optometrists either quit outright by notifying Ivision that they were cancelling their optometrist agreements (some in similarly-worded letters), or by simply refusing service to those patients enrolled in Ivision plans so that Ivision was forced to terminate these doctors as optometrists.

33. So as to maintain an effective network, retain its remaining optometrists and recruit new optometrists in the face of Respondents' efforts and success in organizing a boycott, Ivision was forced to raise substantially its reimbursement rates. In November 2004, Ivision increased its rate for an eye examination and the dispensing of eye glasses from \$30 to \$35; it made a similar increase for an examination and the dispensing of contact lenses. Ivision was also forced to waive monetary amounts that some optometrists owed it.

CONDUCT WITH OTHER PAYORS

34. In addition to the conduct described in paragraphs 22 through 33, Respondents orchestrated collective negotiations with at least two other payors.

35. Their efforts included several meetings with and letters to a certain health plan, all directed at having that plan amend its contracts with optometrists so that the optometrists could provide additional higher paying services for the plan. Indeed, to increase its negotiating leverage with this plan, Respondent Dávila sent a letter to all Colegio members urging them not to join the plan until these issues were resolved to the Colegio's satisfaction.

36. Further, officers of the Colegio on several occasions approached another health plan and attempted to negotiate higher reimbursement levels for its members who service that plan.

37. Thus far, these two health plans have been able to resist the collective action exerted by Respondent Colegio.

**RESPONDENTS' PRICE FIXING AND CONCERTED
REFUSAL TO DEAL IS NOT JUSTIFIED**

38. Respondents' price fixing and concerted refusal to deal, and the agreements, acts, and practices described above, have not been, and are not, reasonably related to any efficiency-enhancing integration among the optometrist members of the Colegio. Respondent Colegio's member optometrists do not share substantial financial risk and are not otherwise integrated in ways that would increase the potential for increased quality and reduced cost of the care the optometrists provide to patients.

**RESPONDENTS' ACTIONS HAVE HAD SUBSTANTIAL
ANTICOMPETITIVE EFFECTS**

39. Respondents' acts and practices as described herein have had, or tend to have, the effect of restraining trade unreasonably and hindering competition in the provision of optometry services in Puerto Rico in the following ways, among others:

- A. price and other forms of competition among competing optometrists were unreasonably restrained;
- B. prices for vision care services were increased; and
- C. payors, employers, and individual consumers were deprived of the benefits of competition among optometrists.

VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

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 day of , 2007, issues its Complaint against Respondents Colegio de Optometras, Edgar Dávila García, and Carlos Rivera Alonso.

By the Commission.

Donald S. Clark
Secretary

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