

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

**COMMISSIONERS: Timothy J. Muris, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary**

In the Matter of

**R.T. WELTER AND ASSOCIATES, INC.,
a corporation,**

**R. TODD WELTER,
individually,**

**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.,

**COHEN AND WOMACK, M.D., P.C.,
professional corporations, and**

**WESTSIDE WOMEN'S CARE, L.L.P.,
a partnership of professional corporations.**

DOCKET NO. C-4063

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 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 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.
- 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.
- 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
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
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;
- 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
- 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 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 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 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.

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.

IX.

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

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED: October 8, 2002

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

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,