

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Robert Pitofsky, Chairman
Mary L. Azcuenaga
Janet D. Steiger
Roscoe Burton Starek, III
Christine A. Varney

In the Matter of)	
)	
MONTANA ASSOCIATED PHYSICIANS, INC.,)	
a corporation, and)	
)	DOCKET NO. C-3704
BILLINGS PHYSICIAN HOSPITAL)	
ALLIANCE, INC.,)	DECISION AND ORDER
a corporation.)	

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of a complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all of the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said 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 Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the

respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent MAPI is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Montana, with its office and principal place of business located at 1242 North 28th Street, Suite 1A, Billings, Montana 59101.

2. Respondent BPHA is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Montana, with its office and principal place of business located at 1233 North 30th Street, Billings, Montana 59101.

3. 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.

ORDER

I.

IT IS ORDERED that, for purposes of this order, the following definitions shall apply:

A. "Montana Associated Physicians, Inc." or "MAPI" means Montana Associated Physicians, Inc., its subsidiaries, divisions, committees, and groups and affiliates controlled by MAPI; their directors, officers, representatives, agents, and employees; and their successors and assigns.

B. "Billings Physician Hospital Alliance, Inc." or "BPHA" means Billings Physician Hospital Alliance, Inc., its subsidiaries, divisions, committees, and groups and affiliates controlled by BPHA; their directors, officers, representatives, agents, and employees; and their successors and assigns.

C. "Third-party payer" means any person or entity that reimburses for, purchases, or pays for all or any part of the health care services provided to any other person, and includes, but is not limited to: health insurance companies; prepaid hospital, medical, or other health service plans, such as Blue

Shield and Blue Cross plans; health maintenance organizations; preferred provider organizations; government health benefits programs; administrators of self-insured health benefits programs; and employers or other entities providing self-insured health benefits programs.

D. "Risk-sharing joint venture" means a joint arrangement to provide health care services in which physicians who would otherwise be competitors share a substantial risk of loss from their participation in the venture.

E. "Fees" means any and all cash or non-cash charges, rates, prices, benefits, or other compensation received, to be received, or charged to a patient or third-party payer for the rendering of physician services.

II.

IT IS FURTHER ORDERED that MAPI, 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 the Federal Trade Commission Act, forthwith shall cease and desist from entering into, attempting to enter into, organizing, attempting to organize, implementing, attempting to implement, continuing, attempting to continue, facilitating, attempting to facilitate, ratifying, or attempting to ratify any combination, contract, agreement, understanding, or conspiracy with or among any physician(s) to:

- A. Negotiate, deal, or refuse to deal with any third-party payer, employer, hospital, or any other provider of health care services;
- B. Determine the terms, conditions, requirements, or any other aspect of becoming or remaining a participating physician in any program or plan of any third-party payer; and
- C. Fix, raise, stabilize, establish, maintain, adjust, or tamper with any fee, fee schedule, price, pricing formula, discount, conversion factor, or other aspect or term of the fees charged or the fees to be charged for any physician's services.

PROVIDED THAT nothing in this order shall be construed to prohibit MAPI from forming, facilitating, or participating in the formation of a risk-sharing joint venture, which may deal with a

third-party payer on collectively determined terms, as long as the physicians participating in the risk-sharing joint venture also remain free to deal individually with any third-party payer.

FURTHER PROVIDED THAT nothing in this order shall be construed to prohibit MAPI from forming, facilitating, or participating in the formation of any other joint venture for which MAPI receives the prior approval of the Commission.

III.

IT IS FURTHER ORDERED that MAPI, 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 the Federal Trade Commission Act, forthwith shall cease and desist from:

- A. Requesting, proposing, urging, advising, recommending, advocating, or attempting to persuade in any way any physician or physician's practice to fix, raise, stabilize, establish, maintain, adjust, or tamper with any fee, fee schedule, price, pricing formula, discount, conversion factor, or other aspect or term of the fees charged or the fees to be charged for any physician's services;
- B. Creating, formulating, suggesting, encouraging adherence to, endorsing, or authorizing any list or schedule of fees for physicians' services, including, but not limited to, suggested fees, proposed fees, fee guidelines, discounts, discounted fees, standard fees, or recommended fees;
- C. Encouraging, advising, pressuring, inducing, or attempting to induce any person to engage in any action prohibited by this order; and

IV.

IT IS FURTHER ORDERED that BPHA, 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 the Federal Trade Commission Act, forthwith shall cease and desist from entering into, attempting to enter into, organizing, attempting to organize, implementing,

attempting to implement, continuing, attempting to continue, facilitating, attempting to facilitate, ratifying, or attempting to ratify any combination, contract, agreement, understanding, or conspiracy with or among any physician(s) to:

- A. Negotiate, deal, or refuse to deal with any third-party payer for physician services;
- B. Determine the terms, conditions, requirements, or any other aspect of becoming or remaining a participating physician in any program or plan of any third-party payer; and
- C. Fix, raise, stabilize, establish, maintain, adjust, or tamper with any fee, fee schedule, price, pricing formula, discount, conversion factor, or other aspect or term of the fees charged or the fees to be charged for any physician's services.

PROVIDED THAT nothing in this order shall be construed to prohibit BPHA from forming, facilitating, or participating in the formation of a risk-sharing joint venture, which may deal with a third-party payer on collectively determined terms, as long as the physicians participating in the risk-sharing joint venture also remain free to deal individually with any third-party payer.

FURTHER PROVIDED THAT nothing in this order shall be construed to prohibit BPHA from forming, facilitating, or participating in the formation of any other joint venture for which BPHA receives the prior approval of the Commission.

FURTHER PROVIDED THAT nothing in this order shall be construed to prohibit BPHA from implementing, attempting to implement, continuing, or attempting to continue, for the express term thereof, contracts with third-party payers that were in effect on September 30, 1994.

FURTHER PROVIDED THAT nothing in this order shall be construed to prohibit BPHA from continuing to function as a physician-hospital organization that is not a risk-sharing or otherwise integrated entity, as long as each of the following conditions is met:

(a) Saint Vincent Hospital and Health Center is the only hospital in Yellowstone County, Montana, that participates in BPHA;

(b) BPHA's role in the contracting process between third-party payers and physician members of BPHA is limited to:

(i) soliciting or receiving from an individual physician member of BPHA, and conveying to a third-party payer, information relating to fees or other aspects of reimbursement, outcomes data, practice parameters, utilization patterns, credentials, and qualifications;

(ii) conveying to a physician member of BPHA any contract offer made by a third-party payer;

(iii) soliciting or receiving from a third-party payer, and conveying to a physician member of BPHA, clarifications of proposed contract terms;

(iv) providing to a physician member of BPHA objective information about proposed contract terms, including comparisons with terms offered by other third-party payers;

(v) conveying to a physician member of BPHA any response made by a third-party payer to information conveyed, or clarifications sought, by BPHA;

(vi) conveying, in individual or aggregate form, to a third-party payer, the acceptance or rejection by a physician member of BPHA of any contract offer made by such third-party payer; and

(vii) at the request of a third-party payer, providing the individual response, information, or views of each physician member of BPHA concerning any contract offer made by such third-party payer.

(c) each physician member of BPHA makes an independent, unilateral decision to accept or reject each contract offer made by a third-party payer;

(d) BPHA does not: (i) disseminate to any physician another physician's fees, other aspects of reimbursement, or views or intentions as to possible terms of dealing with a third-party payer; (ii) act as an agent for the collective negotiation or agreement by the physician members of BPHA; or (iii) encourage or facilitate collusive behavior among physician members of BPHA; and

(e) each physician member of BPHA remains free to deal individually with any third-party payer.

V.

IT IS FURTHER ORDERED that MAPI and BPHA shall:

A. Within thirty (30) days after the date on which this order becomes final, distribute by first-class mail a copy of this order and the accompanying complaint to each of their members, officers, directors, managers, and employees;

B. For a period of five (5) years after the date this order becomes final, distribute by first-class mail a copy of this order and the accompanying complaint to each new MAPI or BPHA member, officer, director, manager, and employee within thirty (30) days of their admission, election, appointment, or employment; and

C. For a period of five (5) years after the date this order becomes final, publish annually in an official annual report or newsletter sent to all members, a copy of this order and the accompanying complaint with such prominence therein as is given to regularly featured articles.

VI.

IT IS FURTHERED ORDERED that MAPI and BPHA shall each file a verified written report within sixty (60) days after the date this order becomes final, annually thereafter for five (5) years on the anniversary of the date this order became final, and at such other times as the Commission or its staff may by written notice require, setting forth in detail the manner and form in which they have complied and are complying with the order.

VII.

IT IS FURTHER ORDERED that MAPI and BPHA shall:

A. Notify the Commission at least thirty (30) days prior to any proposed change in such corporate respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in such corporation that may affect compliance obligations arising out of the order; and

B. For a period of five (5) years after the date this order becomes final, notify the Commission in writing forty-five

(45) days prior to forming or participating in the formation of, or joining or participating in, any risk-sharing joint venture.

VIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this order, MAPI and BPHA 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 the possession or under the control of a respondent relating to any matters contained in this order; and

B. Upon five days' notice to a respondent and without restraint or interference from it, to interview officers, directors, or employees of a respondent.

IX.

IT IS FURTHER ORDERED that this order shall terminate on
January 13, 2017.

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED: January 13, 1997

ATTACHMENT: Concurring Statement of Commissioner Azcuenaga

Concurring Statement of Commissioner Mary L. Azcuenaga
in Montana Associated Physicians, Inc., Docket No. C-3704

I concur in the decision to issue the complaint and order and write separately to emphasize two points. First, the complaint and order do not directly challenge the organization and conduct of the Billings Physician Hospital Alliance, Inc., as a physician hospital organization (PHO), and in my view, this order should cast no shadow on the activities of PHO's. Second, although I concur in the unusual and complicated fencing-in relief in the particular circumstances of this case, in my view, this negotiated order is not, and should not be read as, a guide for what a PHO can and cannot do.