

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

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

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Montana Associated Physicians, Inc. ("MAPI") and the Billings Physician Hospital Alliance, Inc. ("BPHA"), hereinafter sometimes referred to as respondents, have violated and are violating the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH ONE: 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.

PARAGRAPH TWO: There are approximately 115 shareholders of MAPI, all of whom are physicians, and they constitute the membership of MAPI. MAPI's members provide medical services in over 30 independent physician practices in Billings, Montana. MAPI's members constitute approximately 43 percent of all physicians in Billings, Montana, and primarily practice fee-for-service medicine. An approximately equal number of the other physicians in Billings are part of a single multispecialty physician practice. MAPI's members constitute over 80 percent of all "independent" Billings physicians, that is, those who are not part of the multispecialty physician practice or employed by a

hospital. A significant portion of MAPI's activities furthers the pecuniary interests of its members.

PARAGRAPH THREE: 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.

PARAGRAPH FOUR: BPHA is a physician-hospital organization, whose membership consists of Saint Vincent Hospital and Health Center ("Saint Vincent") of Billings, Montana, and a majority of the physicians on Saint Vincent's active medical staff. Almost all of MAPI's members are also physician members of BPHA. BPHA contracts with third-party payers on behalf of its members to provide services to third-party payers' subscribers and enrollees. There are approximately 126 physician members of BPHA, practicing in over 30 independent physician practices, located almost exclusively in Billings, Montana. Physician members of BPHA constitute approximately 45 percent of all physicians in Billings, Montana, and over 80 percent of all independent Billings physicians. The single multispecialty physician practice, referred to in paragraph two, was acquired by the only other hospital in Billings, and has approximately the same number of physicians as BPHA. A significant portion of BPHA's activities furthers the pecuniary interests of its members.

PARAGRAPH FIVE: The general business practices of MAPI, BPHA, and their members, including those herein alleged, are in or affect "commerce" as defined in the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

PARAGRAPH SIX: Except to the extent that competition has been restrained as alleged herein, the physician members of MAPI and BPHA have been, and are now, in competition among themselves and with other providers of physician services in Billings, Montana.

PARAGRAPH SEVEN: Physicians, including the physician members of MAPI and BPHA, are often paid directly or indirectly for their services by third-party payers. Third-party payers such as health insurance companies, preferred provider organizations ("PPOs"), and health maintenance organizations ("HMOs"), reimburse for, purchase, or pay for all or part of the health care services provided to their enrollees or subscribers. Third-party payers generally contract with physicians to become participating providers in plans such payers offer to consumers. These contracts establish the terms and conditions of the

relationship between the physician and the third-party payer, including the fees to be paid the physician for treating subscribers or enrollees of the third-party payer. Through such contracts, third-party payers may obtain capitated payment systems or discounts from physicians' usual fees, and physicians may obtain access to additional patients.

PARAGRAPH EIGHT: Third-party payers in Billings, Montana, compete with each other on the basis of price, coverage offered, physician and hospital quality and availability, and other factors that are important to consumers. Payments to physicians for services rendered to third-party payer subscribers are a large component of a third-party payer's costs, and, therefore, are significant to a third-party payer in determining the price to charge consumers for health care coverage.

PARAGRAPH NINE: 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 payers, competing physicians decide individually whether to enter into contracts with third-party payers to provide services to subscribers or enrollees, and what prices to charge pursuant to such contracts.

PARAGRAPH TEN: In 1986, most of the independent physicians in Billings were members of an organization called Ultracare. At this time, there were no HMOs or PPOs operating in Billings. Ultracare concluded that such plans would soon attempt to contract with physicians in Billings, and that competitive pressure could force physicians to deal with such plans at reduced prices or on other than fee-for-service terms. Accordingly, in March 1987, physician members of Ultracare formed MAPI, in substantial part to be a vehicle for its members to deal collectively with managed care plans. The purpose of engaging in collective dealings was to obtain greater bargaining power with third-party payers by presenting a united front, and thereby to resist competitive pressures to discount fees and to avoid accepting reimbursement on other than the traditional fee-for-service basis.

PARAGRAPH ELEVEN: Beginning in 1986, and continuing to the present, MAPI and MAPI's predecessor, Ultracare, have acted as a combination of their members, have combined with at least some of their members, and have acted to implement agreements among their members to restrain competition by, among other things, facilitating, entering into, and implementing agreements, express or implied, to delay entry of HMOs and PPOs into Billings, to engage in collective negotiations over terms and conditions of dealing with third-party payers, to have MAPI members refrain

from negotiating directly with third-party payers or contracting on terms other than those endorsed by MAPI, and to resist cost containment measures of third-party payers.

PARAGRAPH TWELVE: During 1987 and continuing into 1993, MAPI acted to prevent and delay HMO Montana, an HMO owned and operated by Blue Cross/Blue Shield of Montana, from successfully contracting with physicians in Billings. Beginning in 1987, Blue Cross/Blue Shield of Montana sought to enter into agreements with MAPI's members to participate in HMO Montana. MAPI, on behalf of its members collectively, negotiated with HMO Montana concerning the terms of physicians' contracts with HMO Montana, including price terms, and rejected all contracts proposed by HMO Montana. Members of MAPI told Blue Cross/Blue Shield of Montana that they would negotiate with HMO Montana only through MAPI, and no member of MAPI entered into a contract with HMO Montana.

PARAGRAPH THIRTEEN: Beginning in 1987, MAPI gathered detailed fee information from individual competing MAPI physicians and their physician practices, which enabled MAPI to determine for most physician services the prevailing fees and the maximum reimbursement allowed by Blue Cross/Blue Shield of Montana. After collecting and analyzing this fee information, MAPI advised certain physicians to raise their fees, and some fees were increased in accordance with these recommendations.

PARAGRAPH FOURTEEN: Beginning in 1988, MAPI acted to obstruct efforts by a health plan seeking to establish the first PPO program in Billings. The health plan entered into a PPO contract with Saint Vincent in November 1988 and then sought to contract with physicians on the hospital's medical staff. Some members of MAPI indicated to the plan that they would follow MAPI's recommendations in regard to dealings with the plan. MAPI, on behalf of its members collectively, offered its own proposed physician contract to the plan that provided for physicians to be paid their usual fees with no discounts, represented to the plan that this was what MAPI's members would accept, and objected to any discounts in fees to be paid by MAPI members. After negotiating with MAPI for a year without MAPI ever agreeing to MAPI physicians charging less than their usual fees, the plan contacted individual physicians about signing a PPO contract. When the plan sought to collect current fee information from MAPI members in order to devise a proposed fee schedule to offer to physicians, MAPI urged its members to submit prices higher than they were currently charging in order to inflate the fee schedule. By June 1990, the plan had contracts with only about 30 percent of MAPI's members.

PARAGRAPH FIFTEEN: MAPI was actively involved in the formation of BPHA, which was created in 1991 by Saint Vincent and physicians on its medical staff. A substantial majority of BPHA's physician members are also members of MAPI. Through BPHA's Physician Agreements, MAPI is designated as the agent of almost all MAPI physician members of BPHA with respect to their membership in BPHA. As a result, MAPI has the authority to elect and remove physician members of BPHA's Board of Directors. Until 1993, MAPI's agency authority extended to the acceptance or rejection of any contract negotiated by BPHA with any third-party payer.

PARAGRAPH SIXTEEN: The physician members of BPHA, most of whom are MAPI members, concertedly control BPHA's pricing and other terms of contracts for physician services. BPHA's Bylaws designate that its Contracting Committee shall negotiate the terms and conditions of contracts for physician services with third-party payers, including price terms of those contracts, and recommend acceptance or rejection of said contracts to the members of BPHA. BPHA's Contracting Committee consists almost entirely of physicians and their employees and agents, including for a significant period of time the Executive Director of MAPI. No action of BPHA's Contracting Committee or BPHA's Board of Directors can be taken without the support of a majority of physician representatives on each body. BPHA did not enter into any contract for physician services until nearly two years after its creation.

PARAGRAPH SEVENTEEN: MAPI has combined and is combining with its physician members, and has acted and is acting to implement an agreement among them, to restrain competition among physicians, through an agreement, express or implied, that BPHA would negotiate the terms and conditions of agreements between BPHA physician members and others, including the prices to be paid for their services.

PARAGRAPH EIGHTEEN: The physician members of MAPI and the physician members of BPHA have not integrated their practices in any economically significant way, nor have they created efficiencies sufficient to justify their acts or practices described in paragraphs ten through seventeen.

PARAGRAPH NINETEEN: By engaging in the acts or practices described above, both MAPI and BPHA have combined or conspired with their respective physician members to fix and/or increase the fees received from third-party payers for the provision of physician services, to conduct boycotts, or otherwise to restrain competition among physicians in Billings, Montana.

PARAGRAPH TWENTY: The actions of the respondents described in this complaint have had and have the purpose, tendency, and capacity to result in the following effects, among others:

A. restraining competition among physicians in Billings, Montana;

B. fixing or increasing the prices that are paid for physician services in Billings, Montana; and

C. depriving third-party payers, their subscribers, and patients of the benefits of competition among physicians in Billings, Montana.

PARAGRAPH TWENTY-ONE: The combinations or conspiracies and the 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. The acts and practices, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this thirteenth day of January, 1997, issues its complaint against said respondents.

By the Commission.

SEAL

Donald S. Clark  
Secretary