

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

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

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 the corporations, partnership, and individual named in the caption hereof, hereinafter collectively referred to as "Respondents," have violated and are violating 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:

RESPONDENTS AND JURISDICTION

PARAGRAPH 1: Respondent R.T. Welter and Associates, Inc. (hereinafter “Respondent RTWA”) 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. Respondent RTWA is a consulting firm that offers services to physician clients, in Denver and elsewhere, including the service of representing physicians in contract negotiations with health insurance firms and other third-party payors.

PARAGRAPH 2: R. Todd Welter (hereinafter “Respondent Welter”) is president of Respondent RTWA. His office and principal place of business is 655 Broadway, Suite 500, Denver, CO 80203. Respondent Welter is a consultant, operating through RTWA, who represents physicians in contract negotiations with health insurance firms and other third-party payors.

PARAGRAPH 3: In October 1999, Respondents RTWA and Welter organized numerous physicians into a concerted arrangement for the purpose of collective contract negotiations with health insurance firms and other third-party payors. These physicians specialize in the practices of obstetrics and gynecology (“OB/GYNs”) in the Denver metropolitan area. Respondents named their concerted arrangement “Professionals in Women’s Care” (hereinafter “PIWC”). Aside from the name itself, PIWC lacked any indicia of a formal entity, such as officers, directors, or by-laws. Nonetheless, Respondents Welter and RTWA routinely referred to PIWC’s participating physicians as “members” in correspondence.

PARAGRAPH 4: The medical group practice firms listed below (hereinafter “Respondent Practice Groups”), among the largest OB/GYN medical group practices in the Denver metropolitan area, are participants in PIWC. Each contracted with Respondent RTWA for the purpose of negotiating contracts with health insurance firms and other third-party payors. Respondent Practice Groups are and have been, at all times relevant to this complaint, organized for profit within the meaning of Section 4 of the Federal Trade Commission Act. They are:

- A. Respondent Cohen and Womack, M.D., P.C., a professional corporation with its office and principal place of business located at 255 Union Boulevard, Suite 200, Lakewood, CO 80228.
- B. Respondent Consultants in Obstetrics and Gynecology, P.C., a professional corporation with its office and principal place of business located at 4500 East 9th Ave, Suite 300, Denver, CO 80220.
- C. Respondent Mid Town Obstetrics & Gynecology, P.C., a professional corporation with its office and principal place of business located at 2005 Franklin Street, Midtown II, Suite 440, Denver, CO 80205.

- D. Respondent Mile High OB/GYN Associates, P.C., a professional corporation with its office and principal place of business located at 455 South Hudson St., Level 2, Denver, CO 80246.
- E. Respondent The OB-GYN Associates Professional Corporation, a professional corporation with its office and principal place of business located at 3773 Cherry Creek North Drive, Suite 100, Denver, CO 80209.
- F. Respondent Rocky Mountain OB-GYN, P.C., a professional corporation with its office and principal place of business located at 4500 East 9th Ave., Suite 200-S, Denver, CO 80220.
- G. Respondent The Women's Health Group, P.C., a professional corporation with its office and principal place of business located at 9195 Grant Street, Suite 300, Thornton, CO 80229.
- H. Respondent Westside Women's Care, L.L.P., a partnership of professional corporations with its office and principal place of business located at 7950 Kipling Street, Suite 201, Arvada, CO 80005.

PARAGRAPH 5: At all times relevant to this Complaint, Respondents RTWA and Welter were engaged in the business of providing consulting services in the Denver metropolitan area to OB/GYNs who provide health care services for a fee to patients. All members of the Respondent Practice Groups, and all other PIWC participants, are physicians engaged in the business of providing obstetrical and gynecological services for a fee to patients, are licensed to practice medicine in the State of Colorado, and have offices located in the Denver metropolitan area. Except to the extent that competition has been restrained as alleged herein, Respondent Practice Groups have been, and are now, in competition with each other, with other PIWC participants, and with other OB/GYNs for the provision of physician services.

PARAGRAPH 6: The Respondents' general business practices, including the acts and practices alleged herein, are in or affecting "commerce" as defined in the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

OVERVIEW OF MARKET AND PHYSICIAN COMPETITION

PARAGRAPH 7: Approximately 88 OB/GYNs participate in PIWC. These PIWC participants constitute a significant percentage of the OB/GYNs practicing in the Denver metropolitan area. About one-half of the participants in PIWC are OB/GYNs who practice medicine through one of the Respondent Practice Groups.

PARAGRAPH 8: Physicians often contract with health insurance firms and other third-party payors (hereinafter "payors"), such as preferred provider organizations. Such contracts typically

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

PARAGRAPH 9: 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 10: Medicare's Resource Based Relative Value System ("RBRVS") is a system used by the 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. It is the practice of payors in the Denver metropolitan area to make contract offers to individual physicians at a fee level specified in the RBRVS for a particular year, plus a markup based on some percentage of that fee (*e.g.*, "110 percent of 2001 RBRVS"). Most gynecological services and some obstetrical services are reimbursed according to this system.

PARAGRAPH 11: Obstetrical professional services include services for childbirth and related prenatal and postnatal services. In most payor contracts for such services in the Denver metropolitan area, obstetricians receive a "global" fee for attending a normal delivery, regardless of the number of visits or associated services the physician provides to the patient.

PARAGRAPH 12: In order to be competitively marketable in the Denver metropolitan area, a payor's health insurance plan must include in its physician network a large number of OB/GYNs who practice in the Denver metropolitan area. A significant percentage of the OB/GYNs who practice in the Denver metropolitan area participate in PIWC.

PARAGRAPH 13: Competing physicians sometimes use a "messenger" to facilitate the establishment of contracts between themselves and 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 payor's offer to them based on the messenger's opinion on the appropriateness, or lack thereof, of the offer.

RESTRAINT OF TRADE

PARAGRAPH 14: The Respondent Practice Groups, acting as a combination of competing physicians through PIWC, and Respondents RTWA and Welter, in conspiracy with the Respondent Practice Groups, have acted to restrain competition by, among other things:

- A. facilitating, negotiating, entering into, or implementing agreements on fees and other competitively significant terms;
- B. refusing to deal with payors except on collectively agreed-upon terms; and
- C. negotiating uniform fees and other competitively significant terms in payor contracts for PIWC's participants, and refusing to submit payor offers to PIWC participants that do not conform to Respondents' standards for contracts.

FORMATION AND OPERATION OF PIWC

PARAGRAPH 15: Respondent Welter and Respondent Practice Groups organized collectively under the name "PIWC" in October 1999 to engage in collective contract negotiations with payors. Respondent Welter and the Respondent Practice Groups encouraged other OB/GYNs to participate in PIWC for the purpose of acting as a united front to demand and receive higher fees and other, more advantageous terms from payors. Respondent Welter enlisted participation in PIWC by promising to "stop the downward slide of reimbursement from managed care insurance companies."

PARAGRAPH 16: In or about October 1999, Respondent Welter and representatives of the Respondent Practice Groups created the "Steering Committee," as a means to manage the collusive arrangement known as PIWC. The Steering Committee was composed of one representative from each of the Respondent Practice Groups. The PIWC Steering Committee was responsible for adoption of a general strategy that Respondent Welter would use to negotiate higher fees from payors on behalf of PIWC's participating physicians. Respondent Welter advised Steering Committee members that they "must meet periodically to discuss the [PIWC's] operations, set managed care targets, and to discuss and agree on strategy."

PARAGRAPH 17: The OB/GYNs who participate in PIWC do not pay membership fees or make capital contributions. Instead, they jointly pay Respondent Welter an hourly fee to represent them in contract negotiations with payors. OB/GYNs participating in PIWC, or the medical group practices in which they were members, signed an agreement authorizing Respondent Welter to negotiate, on their behalf, fees and other terms of "non-risk" managed care contracts with payors. In non-risk contracts, physicians and payors do not share financial risk through arrangements such as capitation or fee withholds.

PARAGRAPH 18: Respondent Practice Groups and other PIWC participants collectively decided to authorize Respondent Welter to renegotiate fee terms contained in existing payor contracts, advised Respondent Welter to reject payor fee offers that were too low, and determined whether Respondent Welter should deal with a particular payor. As contract negotiations with particular payors progressed, Respondent Welter regularly held Steering Committee meetings and general meetings among all PIWC participants to discuss details of his payor contract negotiations, including the status of fee negotiations, the specific fee levels that were discussed, and overall contract strategy.

PARAGRAPH 19: Respondent Welter has a practice, inconsistent with a messenger model arrangement, of not conveying to PIWC participants the terms of payor offers that Respondent Welter and the Respondent Practice Groups deem deficient. The Respondent Practice Groups, and the PIWC participants more generally, understood and jointly agreed that Respondent Welter would first negotiate with payors for favorable contract terms. Respondents understood that the payors would offer more advantageous terms to PIWC participants if the physicians negotiated on a collective, rather than unilateral, basis. Only after engaging in such jointly authorized negotiations did Respondent Welter convey the payor contract in question to PIWC participants for approval.

PARAGRAPH 20: PIWC participants knew from Respondent Welter's regular reports and updates that he was simultaneously representing all of the PIWC participants in contract negotiations with payors, and that he represented them all for the common purpose of attaining higher fees for them. Respondent Welter, with the approval of the Respondent Practice Groups, solicited *de facto* exclusivity among PIWC participants, by requesting that they terminate their relationships with independent practice associations ("IPAs") and practice management groups ("PMGs") in the Denver metropolitan area. He urged the PIWC participants to "terminate their IPA affiliations so that the payors can only access them through one direct agreement negotiated through Professionals in Women's Care," stating that "[i]n this way maximum leverage can be made." Many PIWC participants, including most Respondent Practice Groups, terminated their affiliations with such other physician organizations.

PARAGRAPH 21: Respondent Practice Groups exploited PIWC's collective power to exact higher fees and more favorable price-related terms in payor contracts, by using Respondents Welter and RTWA to demand that payors provide PIWC participants with a new contract offer containing more lucrative terms. Many PIWC participants, on whose behalf Respondent Welter made these demands, were already under contract with these payors for a considerable period into the future. Respondent Welter advised PIWC participants, including Respondent Practice Groups, to terminate existing contracts with payors that refused to deal with Respondent RTWA, and Respondent Practice Groups and other PIWC participants followed Respondent Welter's advice by terminating existing payor contracts. Respondent Practice Groups knew that Respondent Welter was representing the PIWC participants as a group, and telling payors that the PIWC Participants were united in bargaining for higher contract fees.

PARAGRAPH 22: Respondents' strategy of collective contract negotiations and concerted refusals to deal individually left payors in the untenable position of having to pay higher fees to the PIWC participants or being denied the OB/GYNs' inclusion in the payors' provider networks – an outcome that would have substantially impaired the payors' ability to compete effectively.

PARAGRAPH 23: In the first year after PIWC was organized, Respondent Welter presented PIWC participants with data that Respondent Welter characterized as showing that their jointly negotiated payor contracts paid each PIWC participant, on average, an 11% increase in fees over the previous year's contracts.

NEGOTIATIONS WITH PACIFICARE

PARAGRAPH 24: PacifiCare Health Systems of Colorado ("PacifiCare") is a payor doing business in the Denver metropolitan area. In the late summer and fall of 1999, PacifiCare made contract offers to numerous OB/GYNs in the Denver metropolitan area. In its contracts, PacifiCare proposed a fee-for-service arrangement based on a percentage of RBRVS; the percentage could be adjusted downward if the physicians' expenses exceeded a pre-determined budgeted amount. Respondent Practice Groups objected to these terms, and collectively retained Respondents RTWA and Welter to negotiate for a different agreement on their behalf.

PARAGRAPH 25: On October 21, 1999, in what would be the first coming together of the arrangement later named "PIWC," Respondent Welter and the Respondent Practice Groups convened a meeting among themselves and OB/GYNs from 7 Denver area hospitals to discuss and jointly respond to PacifiCare's contract offer. At this meeting, the OB/GYNs voted unanimously to authorize Respondent Welter to represent them and negotiate for higher fees on their behalf with PacifiCare. A few days later, Respondent Welter informed PacifiCare that the OB/GYNs had reached a "unanimous decision" to request a meeting with PacifiCare representatives regarding PacifiCare's contract offer, and had unanimously "decided not to sign the current agreement."

PARAGRAPH 26: Respondent Welter advised the PIWC participants, including Respondent Practice Groups, to refuse to sign individual PacifiCare agreements, to refer any communications they may receive from PacifiCare on to Respondent Welter, and to terminate their relationships with IPAs and PMGs under contract with PacifiCare. The purpose of this strategy was to ensure that PacifiCare could only have the PIWC participants in its physician network if it negotiated exclusively with Respondent Welter. PIWC participants, including Respondent Practice Groups, complied with this strategy. Respondent Welter told the PIWC participants that the "termination process" would lead to "payor panic," an outcome that would create bargaining leverage for the collection of PIWC participants. Respondent Welter and the Respondent Practice Groups knew that unless PacifiCare acquiesced in their demands for higher fees, PacifiCare would have no contract with PIWC participants after January 1, 2000.

PARAGRAPH 27: Respondent Welter told PacifiCare’s representatives that the PIWC participants had joined together for the purpose of securing higher fees and better contract terms from payors. He told PacifiCare that he was the agent for all of the OB/GYNs participating in PIWC, that they demanded higher fees from PacifiCare, and that the OB/GYNs had instructed him to tell PacifiCare that they would not agree to PacifiCare’s current contract offer.

PARAGRAPH 28: In response to Respondent Welter’s threat that none of the PIWC participants would sign individual agreements under the current contract proposal, PacifiCare increased its fee offer, both with respect to global delivery fees and RBRVS for OB/GYN services. In March 2000, Respondent Welter informed the PIWC participants that he had succeeded in convincing PacifiCare to offer higher fees. Subsequently, on behalf of PIWC participants, including the Respondent Practice Groups, Respondents RTWA and Welter continued to negotiate fee-related contract language with PacifiCare. When the negotiations were completed, Respondent Welter sent to each PIWC participant an individual PacifiCare contract reflecting the higher fees that he had negotiated. The PIWC participants, including the Respondent Practice Groups, thereafter signed individual agreements.

NEGOTIATIONS WITH AETNA U.S. HEALTHCARE

PARAGRAPH 29: In 2000, Respondent Practice Groups, in their capacity as the PIWC Steering Committee, convened a meeting to consider actions against another payor doing business in the Denver metropolitan area, Aetna U.S. Healthcare (“Aetna”). At that time, Aetna’s standard contract with OB/GYNs contained terminology aimed at controlling the cost of routine care. Respondent Practice Groups and Respondent Welter collectively demanded that Aetna rewrite the OB/GYNs’ contracts, to eliminate all cost control measures and to agree to the specified fees. Aetna refused these demands and informed Respondent Welter that the OB/GYNs could renegotiate with Aetna on an individual basis.

PARAGRAPH 30: Following Aetna’s rejection, Respondent Welter, together with the Respondent Practice Groups, coordinated a response. He informed all PIWC participants that “we have had [a] very unsatisfactory response from Aetna regarding your concerns for proper payment.” Respondent Welter requested that the PIWC participants notify him or his assistant should Aetna request that the OB/GYNs sign an individual contract, so that he could negotiate with Aetna on all the OB/GYNs’ behalf.

PARAGRAPH 31: In or about August, 2000, on the collective behalf of the PIWC participants, Respondent Welter issued to Aetna a September 15, 2000, “deadline for Aetna’s response to our contract issues.” On October 11, 2000, after Aetna refused to meet Respondent Welter’s demands, Respondent Welter told the PIWC participants that due to the “inadequate results the current course of action is having,” “your only option may be to terminate with Aetna.” Around the same time, Respondent Welter told the Respondent Practice Groups that “we are unable to leverage contracts if the members are un-willing to: say NO to bad rates [and] get OUT of other entanglements,” such as IPAs and PMGs, and align themselves exclusively as a group through

PIWC. Respondent Welter threatened to resign as the PIWC participants' agent, unless PIWC participants were willing to hold out for higher fees and terminate their IPA and PMG affiliations. In order to ensure solidarity in their contracting actions, Respondent Welter, with the authority of the Steering Committee, advised the PIWC participants to terminate their IPA and PMG affiliations, which most did.

PARAGRAPH 32: Soon after the efforts of Respondent Welter and the Respondent Practice Groups to ensure "solidarity" among PIWC participants, more than thirty PIWC Participants sent termination notices to Aetna. Concerned that a boycott among PIWC participants would damage its ability to compete, Aetna delivered to Respondent Welter new contracts that raised fees to the higher level that Respondents were demanding. Respondent Welter forwarded the Aetna contracts containing the higher fees to PIWC participants, all of whom signed them.

NEGOTIATIONS WITH ANTHEM BLUE CROSS & BLUE SHIELD

PARAGRAPH 33: Anthem Blue Cross & Blue Shield of Colorado ("Anthem") is a payor doing business in the Denver metropolitan area. Beginning in or about June 2000 and extending through 2001, Respondent Welter met with Anthem representatives to negotiate better contract terms, including higher fees, for PIWC participants. At the time of these negotiations, Anthem had individual contracts with all PIWC participants.

PARAGRAPH 34: In or about early September 2000, Anthem made a contract offer to the PIWC participants, which they all rejected. Anthem made a second contract offer in late September 2000, which contained higher fees for gynecological services than the prior offer. On October 12, 2000, Respondent Welter sent a letter to Anthem, in which he stated that "we represent approximately 85 OB/GYNs in the Denver area," that 70 of those physicians rejected Anthem's most recent offer, that Anthem "should consider the attached rejections as [termination] notice from these physicians," and that the terminating physicians would "begin to immediately notify their patients that they are not on Anthem's panel."

PARAGRAPH 35: In response to Respondent Welter's letter, which expressly or impliedly threatened a group boycott, Anthem submitted a revised contract offer to the PIWC participants. Anthem's new offer contained the highest fees that it was currently paying to any OB/GYNs in the Denver area, including to some of the PIWC participants, who had renewed their individual contracts at these same fee levels. The fees contained in Anthem's latest offer, however, were still lower than what the Respondent Practice Groups and other PIWC participants, through Respondent Welter, had demanded. Accordingly, Respondent Welter advised the PIWC participants to reject the Anthem offer, and more than 30 of them did so. Subsequently, many PIWC participants, including some of the Respondent Practice Groups, wrote letters to Anthem, stating that Respondent Welter was their negotiator and that they were terminating their individual contracts. Respondent Welter personally delivered these letters to Anthem.

PARAGRAPH 36: The simultaneous loss of many OB/GYNs from its health care plan physician network would have adversely affected Anthem’s ability to compete in the Denver metropolitan area. Accordingly, to avoid losing numerous PIWC participants from its network, Anthem increased its fee offer to the level that Respondents and the PIWC participants demanded, and all participants signed contracts with Anthem.

NEGOTIATIONS WITH OTHER PAYORS

PARAGRAPH 37: Since PIWC’s inception in 1999, Respondents RTWA and Welter have informed other payors that they represented between 85 and 88 OB/GYNs in the Denver metropolitan area. With the advice and consent of representatives of the Respondent Practice Groups, Respondent Welter has informed these payors of the fees that the PIWC participants collectively demanded as a condition for contracting with these payors. The Respondent Practice Groups authorized Respondent Welter to tell these payors that PIWC participants would refuse any contract offering fees that were below a specified percentage of Medicare RBRVS and a specified global fee for obstetrical care. Respondent Welter has negotiated contracts with at least two other payors for fees matching or exceeding the levels that Respondents collectively demanded. At all times applicable herein, the Respondent Practice Groups have assisted Respondents RTWA and Welter in developing and coordinating strategy for negotiating terms and rates with particular payors, prior to and during the course of contract negotiations.

LACK OF EFFICIENCIES

PARAGRAPH 38: In collectively negotiating and entering the contracts identified above, the Respondent Practice Groups and other PIWC participants refused to consider any form of financial risk-sharing and have not integrated their practices to create sufficient potential efficiencies. Respondents’ 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 39: Respondents’ actions described above in Paragraphs 14 through 38 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 Denver metropolitan area in the following ways, among others:

- A. fees and other forms of competition among the Respondent Practice Groups and other PIWC participants were unreasonably restrained;
- B. fees for obstetrical and gynecological services were increased; and
- C. competition in the purchase of physician services was restrained to the detriment of health plans, employers, and individual consumers.

PARAGRAPH 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 eighth day of October, 2002, issues its Complaint against Respondents R. T. Welter and Associates, Inc.; R. Todd Welter; 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.; The Women's Health Group, P.C.; and Westside Women's Care, L.L.P.

By the Commission.

Donald S. Clark
Secretary

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