

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

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

In the Matter of )  
 )  
Boulder Valley Individual Practice Association, )  
a corporation. ) Docket No. C-  
 )  
 )

**DECISION AND ORDER**  
**[Public Record Version]**

The Federal Trade Commission (“Commission”), having initiated an investigation of certain acts and practices of Boulder Valley Individual Practice Association, hereinafter referred to as “Respondent,” and Respondent having been furnished thereafter with a copy of the draft Complaint that counsel for the Commission proposed to present to the Commission for its consideration and which, if issued, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order to Cease and Desist (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent 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 Respondent has violated 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, 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 is a not-for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Colorado, with its principal address at 6676 Gunpark Drive, Suite B, Boulder Valley, CO 80301.

2. 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, as used in this Order, the following definitions shall apply:

- A. “Respondent” means Boulder Valley Individual Practice Association, its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by it, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- B. “Medical Group Practice” means a bona fide, integrated firm in which physicians practice medicine together as partners, shareholders, owners, or employees, or in which only one physician practices medicine.
- C. “Non-exclusive Arrangement” means an arrangement that does not restrict the ability of, or facilitate the refusal of, physicians who participate in it to deal with payors on an individual basis or through any other arrangement.
- D. “Participate” in an entity or an arrangement means (1) to be a partner, shareholder, owner, member, or employee of such entity or arrangement, or (2) to provide services, agree to provide services, or offer to provide services to a Payor through such entity or arrangement. This definition applies to all tenses and forms of the word “participate,” including, but not limited to, “participating,” “participated,” and “participation.”
- E. “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, as well as any person that develops, leases, or sells access to networks of Physicians.
- F. “Person” means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.
- G. “Physician” means a doctor of allopathic medicine (“M.D.”), a doctor of osteopathic medicine (“D.O.”), or a doctor of podiatric medicine (“D.P.M.”).
- H. “Preexisting Contract” means a contract for the provision of Physician services that was in effect on the date of the receipt by a Payor that is a party to such contract of notice sent by Respondent BVIPA pursuant to Paragraphs VII.2.b and VII.2.c of this Order of such Payor’s right to terminate such contract.
- I. “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.
- J. “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 price or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies that result from such integration through the arrangement.
- K. “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 jointly to control costs and improve quality by managing the provision of Physician services such as risk-sharing involving:
    - a. the provision of Physician services 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 price, when 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 price or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies that result from such integration through the arrangement.
- L. “Qualified Arrangement” means a Qualified Clinically-Integrated Joint Arrangement or a Qualified Risk-Sharing Joint Arrangement.

## II.

**IT IS FURTHER ORDERED** that Respondent, 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 with respect to their provision of Physician services:

1. to negotiate on behalf of any Physician with any Payor;
  2. to refuse to deal, or threaten to refuse to deal with any Payor, in furtherance of any conduct or agreement that is prohibited by any other provision of Paragraph II of this Order;
  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 not to deal with any Payor other than through any 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 with a Payor;
- C. Attempting to engage in any action prohibited by Paragraphs 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 or conduct involving Respondent that, subject to the requirements of Paragraphs V and VI of this Order, is reasonably necessary to form, Participate in, or take any action in furtherance of, a Qualified Arrangement, so long as such Qualified Arrangement is a Non-exclusive Arrangement.

### III.

**IT IS FURTHER ORDERED** that, for three (3) years from the date this Order becomes final, for any arrangement under which Respondent would act as an agent, or as a messenger, on behalf of any Physician or any Medical Group Practice with any Payor regarding contracts, Respondent shall notify the Commission in writing ("Paragraph III Notification") at least sixty (60) days prior to entering into the arrangement for which Paragraph III Notification is required. The Paragraph III Notification shall include the number of proposed Physician Participants in the proposed arrangement; the proposed geographic area in which the proposed arrangement would operate; a copy of any proposed Physician Participation agreement; a description of the proposed arrangement's purpose and function; a description of any resulting efficiencies expected to be obtained through the proposed arrangement; and a description of procedures to be implemented to limit possible anticompetitive effects of the proposed arrangement, such as those prohibited by this Order.

#### IV.

**IT IS FURTHER ORDERED** that:

- A. If, within sixty (60) days from the date of the Commission's receipt of the Paragraph III Notification, a representative of the Commission makes a written request to Respondent providing such notification for additional information, then Respondent shall not Participate in the proposed arrangement prior to the expiration of thirty (30) days after substantially complying with such request, or such shorter waiting period as may be granted in writing from the Bureau of Competition;
- B. The expiration of any waiting period described herein without a request for additional information, or without the initiation of an enforcement proceeding, shall not be construed as a determination by the Commission, or its staff, that the proposed arrangement does or does not violate this Order or any law enforced by the Commission;
- C. The absence of notice that the proposed arrangement has been rejected, regardless of a request for additional information, shall not be construed as a determination by the Commission, or its staff, that the proposed arrangement has been approved;
- D. Receipt by the Commission of any Paragraph III Notification is not to be construed as a determination by the Commission, or its staff, that the proposed arrangement does or does not violate this Order or any law enforced by the Commission; and
- E. Paragraph III Notification shall not be required prior to Participating in any arrangement for which Paragraph III Notification has previously been given.

#### V.

**IT IS FURTHER ORDERED** that for three (3) years from the date this Order becomes final, pursuant to each Qualified Arrangement in which Respondent is a Participant, Respondent shall notify the Commission in writing ("Paragraph V Notification") at least sixty (60) days prior to:

- A. Participating in, organizing, or facilitating any discussion or understanding with or among any Physicians or Medical Group Practices in such Qualified Arrangement relating to price or other terms or conditions of dealing with any Payor; or
- B. Contacting a Payor, pursuant to a Qualified Arrangement to negotiate or enter into any agreement concerning price or other terms or conditions of dealing with any Payor, on behalf of any Physician or Medical Group Practice in such Qualified Arrangement.

## VI.

**IT IS FURTHER ORDERED** that:

- A. Paragraph V Notification shall include the following information regarding the Qualified Arrangement pursuant to which Respondent intends to engage in the above identified conduct:
1. the total number of Physicians and the number of Physicians in each specialty Participating in the Qualified Arrangement;
  2. a description of the Qualified Arrangement, including its purpose and geographic area of operation;
  3. a description of the nature and extent of the integration and the efficiencies resulting from the Qualified Arrangement;
  4. an explanation of the relationship of any agreement on prices, or contract terms related to price, to furthering the integration and achieving the efficiencies of the Qualified Arrangement;
  5. a description of any procedures proposed to be implemented to limit possible anticompetitive effects resulting from the Qualified Arrangement or its activities; and
  6. all studies, analyses, and reports that were prepared for the purpose of evaluating or analyzing competition for Physician services in any relevant market, including, but not limited to, the market share of Physician services in any relevant market.
- B. If, within sixty (60) days from the Commission's receipt of the Paragraph V Notification, a representative of the Commission makes a written request to Respondent for additional information, then Respondent shall not Participate in any arrangement described in Paragraph V.A or Paragraph V.B of this Order prior to the expiration of thirty (30) days after substantially complying with such request for additional information, or such shorter waiting period as may be granted in writing from the Bureau of Competition;
- C. The expiration of any waiting period described herein without a request for additional information, or without the initiation of an enforcement proceeding, shall not be construed as a determination by the Commission, or its staff, that the proposed Qualified Arrangement does or does not violate this Order or any law enforced by the Commission;
- D. The absence of notice that the proposed Qualified Arrangement has been rejected, regardless of a request for additional information, shall not be construed as a determination by the Commission, or its staff, that the proposed Qualified Arrangement has been approved;
- E. Receipt by the Commission of any Paragraph V Notification regarding Participation pursuant to a proposed Qualified Arrangement is not to be construed as a determination by the Commission that any such proposed Qualified Arrangement does or does not violate this Order or any law enforced by the Commission; and

- F. Paragraph V Notification shall not be required prior to Participating in any Qualified Arrangement for which Paragraph V Notification has previously been given.

## VII.

**IT IS FURTHER ORDERED** that Respondent shall:

- A. Within thirty (30) days after the date on which this Order becomes final:
1. send a copy of this Order and the Complaint by first-class mail with delivery confirmation or electronic mail with return confirmation to:
    - a. every Physician who Participates, or has Participated, in Respondent at any time since January 1, 2001; and
    - b. each current officer, director, manager, and employee of Respondent;
  2. send by first-class mail, return receipt requested to the chief executive officer of each Payor with whom Respondent has record of being in contact since January 1, 2001, regarding contracting for the provision of Physician services:
    - a. a copy of this Order and the Complaint;
    - b. with the exception of those Payors identified at Confidential Appendix B to this Order, the letter attached as Appendix A to this Order; and
    - c. the letter attached as Appendix C to this Order to those Payors identified at Confidential Appendix B to this Order.
- B. Terminate, without penalty or charge, and in compliance with any applicable laws:
1. any Preexisting Contract with any Payor who is sent the letter attached as Appendix A to this Order, at the earlier of: (1) receipt by Respondent of a written request to terminate such contract from any Payor that is a party to the contract, or (2) the earliest termination date, renewal date (including any automatic renewal date), or the anniversary date of such contract; and
  2. any Preexisting Contract with any Payor who is sent the letter attached as Appendix C to this Order upon receipt by Respondent of a written request to terminate such contract from any Payor that is a party to the contract.

**PROVIDED, HOWEVER,** a Preexisting Contract with a Payor to be terminated pursuant to Paragraph VII.B.1 may extend beyond any such termination or renewal date no later than one (1) year from the date that the Order becomes final if, prior to such termination or renewal date:

- (a) the Payor submits to Respondent a written request to extend such contract to a specific date no later than one (1) year from the date that this Order becomes final, and
- (b) Respondent has determined not to exercise any right to terminate.

**PROVIDED FURTHER**, that any Payor making such request to extend a contract retains the right, pursuant to Paragraph VII.B.1 of this Order, to terminate the Preexisting Contract at any time.

- C. Within ten (10) days of receiving a written request to terminate from a Payor, pursuant to Paragraph VII.B of this Order, distribute, by first-class mail, return receipt requested, a copy of that request to each Physician Participating in such contract as of the date that Respondent receives such request to terminate; and
- D. For three (3) years from the date this Order becomes final:
  - 1. Distribute by first-class mail, return receipt requested, a copy of this Order and the Complaint to:
    - a. each Physician who begins Participating in Respondent, and who did not previously receive a copy of this Order and the Complaint from Respondent within thirty (30) days of the time that such Participation begins;
    - b. each Payor who contracts with Respondent for the provision of Physician services, and who did not previously receive a copy of this Order and the Complaint from Respondent, within thirty (30) days of the time that such Payor enters into such contract; and
    - c. each Person who becomes an officer, director, manager, or employee of Respondent, and who did not previously receive a copy of this Order and the Complaint from Respondent, within thirty (30) days of the time that he or she assumes such position;
  - 2. Annually publish in any official report or newsletter sent to all Physicians who Participate in Respondent a copy of this Order and the Complaint with such prominence as is given to regularly featured articles.

### **VIII.**

**IT IS FURTHER ORDERED** that Respondent shall file verified written reports within sixty (60) days from the date this Order becomes final, annually thereafter for three (3) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may by written notice require. Each report shall include, among other information that may be necessary:

- A. The name, address, and telephone number of each Payor with which Respondent has had any contact during the one (1) year period preceding the date for filing such report;
- B. The identity of each Payor sent a copy of the letter attached as Appendix A, the response of each Payor to that letter, and the status of each contract to be terminated pursuant to that letter;
- C. A copy of any request to terminate a contract from a Payor identified at Confidential Appendix B, and the status of each contract to be terminated pursuant to that letter;



- D. Copies of the delivery confirmations or electronic mail with return confirmations required by Paragraph VII.A.1, and copies of the signed return receipts required by Paragraphs VII.A.2, VII.C, and VII.D; and
- E. A detailed description of the manner and form in which Respondent has complied and is complying with this Order.

**IX.**

**IT IS FURTHER ORDERED** that Respondent shall notify the Commission:

- A. Of any change in its Principal Address within twenty (20) days of such change in address; and
- B. At least thirty (30) days prior to any proposed: (a) dissolution of Respondent; (b) acquisition, merger, or consolidation of Respondent; or (c) any other change in Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

**X.**

**IT IS FURTHER ORDERED** that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondent, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondent, and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession, or under the control, of Respondent relating to compliance with this Order, which copying services shall be provided by Respondent at its expense; and
- B. To interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

**XI.**

**IT IS FURTHER ORDERED** that this Order shall terminate twenty (20) years from the date it is issued.

By the Commission.

Donald S. Clark  
Secretary

SEAL  
ISSUED:

## Appendix A

[letterhead of BVIPA]

[name of payor's CEO]  
[address]

Dear \_\_\_\_\_:

Enclosed is a copy of a complaint and a consent order ("Order" ) issued by the Federal Trade Commission against BVIPA ("Boulder Valley").

Pursuant to Paragraph VIII.B.1 of the Order, BVIPA must allow you to terminate, upon your written request, without any penalty or charge, any contracts with BVIPA that are in effect as of the date you receive this letter.

If you do not make a written request to terminate the contract, Paragraph VIII.B. further provides that the contract will terminate on the earlier of the contract's termination date, renewal date (including any automatic renewal date), or anniversary date, which is [date].

You may, however, ask BVIPA to extend the contract beyond [date], the termination, renewal, or anniversary date, to any date no later than [date], one (1) year after the date the Order becomes final.

If you choose to extend the term of the contract, you may later terminate the contract at any time.

Any request either to terminate or to extend the contract should be made in writing, and sent to me at the following address: [address].

Sincerely,

[BVIPA to fill in information in brackets]

**Confidential Appendix B**

**[Redacted From the Public Record Version But Incorporated By Reference]**

## Appendix C

[letterhead of BVIPA]

[name of payor's CEO]  
[address]

Dear \_\_\_\_\_:

Enclosed is a copy of a complaint and a consent order (“Order” ) issued by the Federal Trade Commission against BVIPA (“Boulder Valley”).

Pursuant to Paragraph VIII.B.2 of the Order, BVIPA must allow you to terminate, upon your written request, without any penalty or charge, any contracts with BVIPA that are in effect as of the date you receive this letter.

Any request to terminate the contract should be made in writing, and sent to me at the following address: [address].

Sincerely,

[BVIPA to fill in information in brackets]