

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Deborah Platt Majoras, Chairman
Orson Swindle
Thomas B. Leary
Pamela Jones Harbour
Jon Leibowitz

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)	
In the Matter of)	
)	Docket No. C-
WHITE SANDS HEALTH CARE)	
SYSTEM, L.L.C.,)	
a limited liability company,)	
)	
ALAMOGORDO PHYSICIANS’)	
COOPERATIVE, INC.,)	
a cooperative association,)	
)	
DACITE, INC.,)	
a corporation,)	
)	
and)	
)	
JAMES R. LAURENZA,)	
individually.)	
_____)	

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of certain acts and practices of the White Sands Health Care System, L.L.C. (“White Sands”), Alamogordo Physicians’ Cooperative, Inc. (“Alamogordo Physicians”), Dacite, Inc. (“Dacite”), and James R. Laurenza, hereinafter sometimes referred to as “Respondents,” and Respondents having been furnished thereafter with a copy of the draft of Complaint that counsel for the Commission 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 attorney, 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, 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 White Sands is a for-profit limited liability company, organized, existing, and doing business under and by virtue of the laws of the State of New Mexico, with its principal address at 3310 N. White Sands Boulevard, Alamogordo, NM 88311.
2. Respondent Alamogordo Physicians is a cooperative association, organized, existing, and doing business under and by virtue of the laws of the State of New Mexico, with its principal address at P.O. Box 309, Alamogordo, NM 88310.
3. Respondent Dacite is a for-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Wyoming, with its principal address at 106 Sweetbriar Lane, Louisville, KY 40207.
4. Respondent James R. Laurenza is the founder and president of Dacite. His principal address is 106 Sweetbriar Lane, Louisville, KY 40207.
5. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and this proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. "Respondent White Sands" means White Sands Health Care System, L.L.C., its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by White Sands Health Care System, L.L.C., and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.

- B. “Respondent Alamogordo Physicians” means Alamogordo Physicians’ Cooperative, Inc., its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by Alamogordo Physicians’ Cooperative, Inc., and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- C. “Respondent Dacite” means Dacite, Inc., its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by Dacite, Inc. and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- D. “Respondent Laurenza” means James R. Laurenza.
- E. “Respondents” means Respondent White Sands, Respondent Alamogordo Physicians, Respondent Dacite, and Respondent Laurenza.
- F. “Medical group practice” means a bona fide, integrated firm in which providers practice medicine together as partners, shareholders, owners, members, or employees, or in which only one provider practices medicine.
- G. “Participate” 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.”
- H. “Payor” means any person that pays, or arranges for the payment, for all or any part of any provider services for itself or for any other person. “Payor” includes any person that develops, leases, or sells access to networks of providers.
- I. “Person” means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.
- J. “Physician” means a doctor of allopathic medicine (“M.D.”) or a doctor of osteopathic medicine (“D.O.”).
- K. “Preexisting contract” means a contract that was in effect on the date of the receipt by a payor that is a party to such contract of notice sent, pursuant to Paragraph V.B of this Order, of 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. “Provider” means any licensed health care professional, including, but not limited to, physicians and nurse anesthetists.
- N. “Qualified clinically-integrated joint arrangement” means an arrangement to provide provider services in which:
1. all providers that 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 providers 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 through the joint arrangement.
- O. “Qualified risk-sharing joint arrangement” means an arrangement to provide provider services in which:
1. all providers who participate in the arrangement share substantial financial risk through their participation in the arrangement and thereby create incentives for the providers who participate jointly to control costs and improve quality by managing the provision of provider services, such as risk-sharing involving:
 - a. the provision of provider services for a capitated rate from payors;
 - b. the provision of provider services for a predetermined percentage of premium or revenue from payors;
 - c. the use of significant financial incentives (*e.g.*, substantial withholds) for providers 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 providers in different specialties offering a complementary mix of services, for a fixed, predetermined price, 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 price 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 provider 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 providers:
 - 1. to negotiate on behalf of any provider 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 provider 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 through any arrangement other than Respondent White Sands or Respondent Alamogordo Physicians;
- B. Exchanging or facilitating in any manner the exchange or transfer of information among providers concerning any provider’s willingness to deal with a payor, or the terms or conditions, including price terms, on which the provider 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 Paragraph II of this Order shall prohibit any agreement involving or conduct by:

- (i) Respondent Dacite or Respondent Laurenza, subject to the provisions of Paragraph IV below, that is reasonably necessary to form, participate in, or take any action in furtherance of a qualified risk-sharing joint arrangement or a qualified clinically-integrated joint arrangement, or that solely involves providers in the same medical group practice; or
- (ii) Respondent White Sands or Respondent Alamogordo Physicians that is reasonably necessary to form, participate in, or take any action in furtherance of a qualified risk-sharing joint arrangement or a qualified clinically-integrated joint

arrangement, so long as the arrangement does not restrict the ability, or facilitate the refusal, of providers who participate in it to deal with payors on an individual basis or through any other arrangement.

III.

IT IS FURTHER ORDERED that Respondent Dacite and Respondent Laurenza, for three (3) years after the date that this Order becomes final, directly or indirectly, or through any corporate or other device, in connection with the provision of provider 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 Respondent White Sands, Respondent Alamogordo Physicians, or any provider who participates or has participated in Respondent White Sands or Respondent Alamogordo Physicians, notwithstanding whether such conduct also is prohibited by Paragraph II of this Order; and
- B. Advising any provider who participates, or has participated, in Respondent White Sands or Respondent Alamogordo Physicians to accept or reject any term, condition, or requirement of dealing with any payor, notwithstanding whether such conduct also is prohibited by Paragraph II of this Order.

IV.

IT IS FURTHER ORDERED that, for three (3) years from the date this Order becomes final, each Respondent shall notify the Secretary of the Commission in writing (“Notification”) at least sixty (60) days prior to entering into any arrangement with any providers under which such Respondent would act as a messenger, or as an agent on behalf of those providers, with payors regarding contracts. The Notification shall include the identity of each proposed provider participant; the proposed geographic area in which the proposed arrangement will operate; a copy of any proposed provider participation agreement; a description of the proposed arrangement’s purpose and function; a description of any resulting efficiencies expected to be obtained through the arrangement; and a description of procedures to be implemented to limit possible anticompetitive effects, such as those prohibited by this Order. Notification is not required for such Respondent’s subsequent acts as a messenger pursuant to an arrangement for which this Notification has been given. Receipt by the Commission from such Respondent of any Notification, pursuant to Paragraph IV of the Order, is not to be construed as a determination by the Commission that any action described in such Notification does or does not violate this Order or any law enforced by the Commission.

PROVIDED, HOWEVER, that, if Respondent Dacite or Respondent Laurenza enter into an arrangement that solely involves providers in one medical group practice, Notification required by Paragraph IV of this Order shall include only the identity of that medical group practice and a copy of any proposed provider participation agreement.

V.

IT IS FURTHER ORDERED that Respondent White Sands shall:

- A. Within thirty (30) days from the date that this Order becomes final send by first-class mail, return receipt requested, a copy of this Order and the Complaint to:
1. each provider who participates, or has participated, in Respondent White Sands since January 1, 2003;
 2. each officer, director, manager, and employee of Respondent White Sands;
 3. the chief executive officer of each payor with which Respondent White Sands has a record of having been in contact since January 1, 2003, regarding contracting for the provision of provider services, and include in such mailing the notice specified in Appendix A to this Order;
- B. Terminate, without penalty or charge, and in compliance with any applicable laws, any preexisting contract with any payor for the provision of provider services, at the earlier of: (1) receipt by Respondent White Sands of a written request from a payor to terminate such contract, or (2) the earliest termination or renewal date (including any automatic renewal date) of such contract; *provided, however*, a preexisting contract 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 White Sands 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 White Sands 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 part (1) of Paragraph V.B of this Order, to terminate the contract at any time;
- C. Within ten (10) days of receiving a written request from a payor, pursuant to Paragraph V.B(1) of this Order, distribute, by first-class mail, return receipt requested, a copy of that request to each provider participating in Respondent White Sands as of the date Respondent White Sands receives such request;
- D. For a period of three (3) years from the date that this Order becomes final:
1. distribute by first-class mail, return receipt requested, a copy of this Order and the Complaint to:
 - a. each provider who begins participating in Respondent White Sands, and who did not previously receive a copy of this Order and the Complaint, within thirty (30) days of the time that such participation begins;

- b. each payor that contracts with Respondent White Sands for the provision of provider services, and that did not previously receive a copy of this Order and the Complaint, within thirty (30) days of the time that such payor enters into such contract;
 - c. each person who becomes an officer, director, manager, or employee of Respondent White Sands, and who did not previously receive a copy of this Order and the Complaint, within thirty (30) days of the time that he or she assumes such responsibility with Respondent White Sands;
 2. annually publish a copy of this Order and the Complaint in an official annual report or newsletter sent to all providers who participate in Respondent White Sands, with such prominence as is given to regularly featured articles;
- E. File a verified written report within sixty (60) days from the date that 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 such report shall include:
 1. a detailed description of the manner and form in which Respondent White Sands has complied and is complying with this Order;
 2. copies of the return receipts required by Paragraphs V.A, V.C, and V.D of this Order; and
- F. Notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of Respondent White Sands, (2) acquisition, merger or consolidation of Respondent White Sands, or (3) any other change in Respondent White Sands that may affect compliance obligations arising out of the order, including but not limited to assignment, the creation or dissolution of subsidiaries, or any other change in Respondent White Sands.

PROVIDED, HOWEVER, that, if Respondent White Sands dissolves or otherwise ceases to do business, Respondent Alamogordo Physicians shall have the obligation to comply with those provisions of Paragraph V.A through V.E of this Order to the extent applicable to Respondent Alamogordo Physicians, its officers, and members of its board of directors.

VI.

IT IS FURTHER ORDERED that Respondent Alamogordo Physicians shall notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of Respondent Alamogordo Physicians, (2) acquisition, merger or consolidation of Respondent Alamogordo Physicians, or (3) any other change in Respondent Alamogordo Physicians that may affect compliance obligations arising out of the order, including but not limited to assignment, the creation or dissolution of subsidiaries, or any other change in Respondent Alamogordo Physicians.

VII.

IT IS FURTHER ORDERED that, if neither Respondent White Sands nor Respondent Alamogordo Physicians complies with all or any portion of Paragraphs V.A through V.F of this Order, or if Respondent Alamogordo Physicians fails to comply with Paragraph VI of this Order, within sixty (60) days of the times set forth in those paragraphs, then Respondent Laurenza shall, within thirty (30) days thereafter, comply with those portions of Paragraphs V.A through V.F and Paragraph VI of this Order with which Respondent White Sands or Respondent Alamogordo Physicians did not comply.

VIII.

IT IS FURTHER ORDERED that Respondent Dacite shall:

- A. Within thirty (30) days from the date that this Order becomes final, send a copy of this Order and the Complaint by first-class mail, return receipt requested:
1. to each provider who participates, or has participated, since January 1, 2003, in a provider group represented by Respondent Dacite;
 2. to each payor with which Respondent Dacite has dealt since January 1, 2003, for the purpose of contracting, or seeking to contract, while representing or advising any group of providers relating to contracting with such payor for the provision of provider services; and
 3. to (a) each present and past employee of Respondent Dacite, and (b) each individual who has acted as a contractor since January 1, 2003, for Respondent Dacite (i) relating to contracting, or seeking to contract, with payors for the provision of provider services, or (ii) relating to advising providers with regard to their dealings with payors in connection with the provision of provider services;

PROVIDED, HOWEVER, that Respondent Dacite is not required to send a copy of this Order and the Complaint to any provider or payor that received a copy of this Order and the Complaint from Respondent White Sands or Respondent Alamogordo Physicians, pursuant to

Paragraphs V.A.1 and 3 or Paragraphs V.D.1.a and b of this Order;

- B. For three (3) years after the date this Order becomes final, distribute a copy of this Order and the Complaint by first-class mail, return receipt requested:
1. to all providers that Respondent Dacite represents relating to contracting, or seeking to contract, with payors for the provision of provider services, or that Respondent Dacite advises relating to the provision of provider services, within (30) days of the time that Respondent Dacite begins providing such representation or advice; and
 2. to each payor with which Respondent Dacite deals for the purpose of contracting, or seeking to contract, pursuant to any arrangement to represent or advise any provider, relating to contracting with such payor for the provision of provider services, within thirty (30) days of such dealing;

PROVIDED, HOWEVER, that Respondent Dacite is not required to send a copy of this Order and the Complaint to any provider who begins participating in Respondent White Sands or Respondent Alamogordo Physicians or any payor that contracts with Respondent White Sands or Respondent Alamogordo Physicians for the provision of provider services, and that received a copy of this Order and the Complaint from Respondent White Sands or Respondent Alamogordo Physicians, pursuant to Paragraphs V.A.1 and 3 or Paragraphs V.D.1.a and b of this Order;

- C. File verified written reports within sixty (60) days from the date that 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:
1. a detailed description of the manner and form in which Respondent Dacite has complied and is complying with this Order; and
 2. copies of the return receipts required by Paragraphs VIII.A and VIII.B; and
- D. Notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of Respondent Dacite, (2) acquisition, merger or consolidation of Respondent Dacite or (3) any other change in Respondent Dacite that may affect compliance obligations arising out of the order, including but not limited to assignment, the creation or dissolution of subsidiaries, or any other change in Respondent Dacite.

IX.

IT IS FURTHER ORDERED that, if Respondent Dacite fails to comply with all or any portion of Paragraph VIII of this Order within sixty (60) days of the time set forth in those portions of Paragraph VIII, then Respondent Laurenza shall, within thirty (30) days thereafter, comply with those portions of Paragraph VIII of this Order with which Respondent Dacite did not comply.

X.

IT IS FURTHER ORDERED that each Respondent shall notify the Commission of any change in his or its respective principal address within twenty (20) days of such change in address.

XI.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, each Respondent 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 his or its possession, or under his or its control, relating to any matter contained in this Order; and
- B. Upon five (5) days' notice to such Respondent, and in the presence of counsel, and without restraint or interference from him or it, to interview such Respondent or employees of such Respondent.

XII.

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: