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March 24, 1994

Mr. Steve Brodsky
U.S. Department of Justice
Antitrust Division
Judiciary Center Building
555 - 4th Street N.W., Room 9425
Washington, D.C. 20001

Dee Hartzog

Re: International Chiropractors Association
of California

Dear Mr. Brodsky:

This firm represents the International Chiropractors Association of California ("ICAC") in connection with its formation of a preferred provider organization known as ICAC Participating Provider Organization ("PPO"). This letter constitutes ICAC's request for a statement of the Department of Justice's enforcement intent with respect to the PPO.

Below is a summary of the proposed structure and related information concerning ICAC's PPO.

A. Structure and Background.

1. ICAC. ICAC was incorporated in November 1963, and is exempt from taxation under section 501(c)(6) of the Internal Revenue Code. Its principal administrative office is located in Sacramento, California. ICAC is affiliated with the national association, the International Chiropractors Association ("ICA"). ICAC members consist of chiropractors licensed to practice in California.

2. PPO Entity Structure. The PPO has been formed as a for-profit California corporation. Its shareholders consist of ICAC and five individuals.

3. Business Purpose. The PPO will contract with any interested ICAC members, and will in turn and on their behalf solicit and negotiate contracts with third party payers, including self-insured employers, health

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maintenance organizations and health insurers in order to provide chiropractic services to California beneficiaries of such payers.

The PPO will also be involved in claims administration, utilization review and quality assessment programs, as noted in more detail below.

In addition, ICAC is considering qualifying as a workers' compensation health care provider organization ("WCHCPO") pursuant to California legislation enacted in 1993. In the event the PPO is certified as a WCHCPO, it will enter into agreements with other health care providers, including hospitals and physicians, necessary to provide the full spectrum of required health care services to injured workers.

4. Product Market. Consistent with the purpose of the 1993 legislation, ICAC believes that workers' compensation costs can be reduced by providing the necessary care and treatment of injured workers in a managed care setting. The PPO's providers, therefore, will primarily be contracting through the PPO with payers whose employees or plan beneficiaries are entitled to health care services pursuant to California's workers' compensation laws.

It is very difficult to specify accurately the degree to which the PPO providers will constitute the product market in any relevant geographic market. Chiropractors also compete with medical doctors, osteopaths and physical therapists in providing services to patients with neuromusculoskeletal injuries and disorders. As to medical doctors and osteopaths, such services may be performed by general practitioners, orthopedists, physiatrists and others. Physical therapists, similarly, overlap in some instances in the nature of the services provided. The relevant product market, therefore, is much broader than chiropractors, and chiropractors currently represent less than ten percent of California's total combined physician/chiropractor market.

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The PPO will not have the power to enhance prices above the competitive level. Its providers currently practice independently of ICAC and the PPO and will continue to do so. Additionally, they will be free to market their services directly to any third party payers and through other provider organizations. For example, many PPO providers concurrently are members of California Chiropractic Association ("CCA") and/or American Chiropractic Network ("ACN") and are contracting or will contract with CCA's and ACN's related managed care organizations.

Because of the multitude of chiropractic and physician provider organizations that exist or are being developed in California at this time, and because of the non-exclusive nature of the PPO, the PPO would have great difficulty in excluding or reducing competition in any geographic market in California.

It is therefore contemplated that the PPO is unlikely to include more than 50% of the chiropractic health care providers that can meet the injured workers' needs in any relevant geographic market. The PPO will take appropriate action to attempt to limit provider contracts in any area where it comes to its attention that the PPO has contracts with more than 50% of the chiropractors in any relevant market.

5. Geographic Market. The PPO solicits contracts from third party payers located in all areas of California. Additionally, the PPO may enter into a single contract with an employer to provide services to all of its workers throughout California. It is anticipated that many of the contracts will be with self-insured employers with offices in other states as well as California.

6. Administration. ICAC has entered into an agreement with a third party administrator ("TPA") which provides claims administration services to chiropractors and other health care providers in other states. The TPA will not only process claims, but will also contact employers and other third party payers in California to solicit offers and negotiate terms for

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PPO provider agreements. The TPA alone will decide whether to accept or reject offers from such payers. All contracting providers will pay annual dues to ICAC which will be used to offset the costs of the PPO's administration.

7. Reimbursement. The PPO initially intends to require that providers agree to accept the lesser of a maximum charge for all services provided during a single office visit or the provider's usual and customary rate for such services.

Based on its experience with employers in other states, the TPA has indicated to ICAC the reimbursement rates that such employers and other third party payers have been willing to offer to providers.

It is possible that the TPA will receive reimbursement offers in excess of or below the maximum per office visit rate. Thus, the TPA is asking for advance authorization from each provider to suggest to third party payers the rate at which the provider is willing to provide services. The TPA will then negotiate whatever rate it can on behalf of all the individual providers. The recommended rate, therefore, is merely a starting point for third party payer negotiations.

To control over-utilization, the amount payable to a provider will be significantly reduced if the provider exceeds the frequency guidelines established by the California Division of Industrial Relations. Thus, after the number of office visits exceeds the recommended frequency limits, the provider will be reimbursed at a substantially reduced rate for any subsequent treatments.

8. Utilization Review, Quality Assurance and Peer Review Committees. The PPO will review compliance with the utilization guidelines to assure appropriate utilization frequency of acute and chronic conditions. The PPO will establish a quality assurance committee to serve as an ombudsman to the PPO board for provider compliance with quality and/or standards of

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care. The peer review committee will review allegations of breaches of professional ethics and will recommend provider termination when appropriate.

B. Pro-Competitive Benefits.

ICAC's PPO will offer California's third party payers and patients a new product which envisions a number of pro-competitive benefits. These benefits include:

- Administrative Convenience. Employers and other third party payers will have the convenience of negotiating with a single intermediary for the provision of chiropractic services to disabled or injured employees and other enrollees. Claims processing will be simplified in that the PPO will review claims, determine the appropriate amount pursuant to the provider agreement and present a single bill to the third party payer who will write a single check to the PPO for disbursement to the individual contracting providers.
- Utilization Controls. The PPO will establish a utilization control procedure based on industry accepted frequency guidelines. Additionally, the reimbursement structure it will recommend to third party payers will create an over-utilization disincentive to providers.
- Cost Savings. The individual providers will gain the benefit of having administrative and marketing costs shared by a larger group. Providers will also benefit by having an entity collect unpaid claims.

Employers will benefit by being able to better predict future health care costs because of the PPO's frequency guidelines. Additionally, because of the great expense of assembling individual provider panels, third party payers may welcome the opportunity to contract directly with a provider-sponsored panel,

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particularly one which can deliver services throughout California. Moreover, chiropractic panels can provide services to injured employees at a lower cost than physician panels. Without the amalgamation of chiropractors, however, the payer might find it less costly to contract with physician panels.

- Quality Assurance. The PPO will establish an independent provider panel that will review treatment methodology and establish treatment protocols for the providers.

In sum, ICAC is attempting to establish a PPO that will incentivize its providers to act in the best interests of the organization in derogation of conflicting incentives they may have as individual practitioners. Because of the uniqueness of ICAC's approach to managed health care, its PPO will expand payer choice, increase competition and reduce overall health care costs.

We would be happy to furnish additional information. We look forward to hearing from you at your earliest convenience.

Yours truly,



Dee Hartzog

DH/lle

cc: James E. Musick, D.C.