

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

OKLAHOMA STATE CHIROPRACTIC
INDEPENDENT PHYSICIANS
ASSOCIATION and LARRY M. BRIDGES,

Defendants.

CASE NO. 13-CV-21-TCK-TLW

FINAL JUDGMENT

WHEREAS, Plaintiff, the United States of America, filed its Complaint on [DATE], alleging that Defendants Oklahoma State Chiropractors Independent Physician’s Association (“Defendant OSCIPA” or “OSCIPA”) and Larry M. Bridges (“Defendant Bridges”) (collectively “Defendants” and each individually a “Defendant”) participated in conduct in violation of Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1, and Plaintiff and Defendants have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law;

AND WHEREAS, this Final Judgment does not constitute any admission by the Defendants that the law has been violated or of any issue of fact or law, other than the jurisdictional facts alleged in the Complaint are true;

AND WHEREAS, the essence of this Final Judgment is to restore competition, as alleged in the Complaint, and to restrain the Defendants from participating in any unlawful conspiracy to increase fees for Physician services or boycott Payers;

AND WHEREAS, the United States requires the Defendants to be enjoined from

rendering services to, or representing, any Physician pertaining to such Physician's dealing with any Payer, for the purpose of preventing future violations of Section 1 of the Sherman Act;

AND WHEREAS, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, Plaintiff requires Defendants to agree to undertake certain actions and refrain from certain conduct for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants have represented to the United States that the actions and conduct restrictions can and will be undertaken and that they will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of law or fact, and upon consent of Plaintiff and the Defendants, it is ORDERED, ADJUDGED AND DECREED:

I. JURISDICTION

This Court has jurisdiction over the subject matter of, and each of the parties to, this action. The Complaint states a claim upon which relief may be granted against the Defendants under Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1.

II. DEFINITIONS

As used in this Final Judgment:

(A) "Communicate" means to discuss, disclose, transfer, disseminate, or exchange information or opinion, formally or informally, directly or indirectly, in any manner;

(B) "Credentialing Services" means a service that recognizes and attests that a physician is both qualified and competent, and that verifies that a physician meets standards as

determined by an organization by reviewing such items as the individual's license, experience, certification, education, training, malpractice and adverse clinical occurrences, clinical judgment, and character by investigation and observation;

(C) "Defendant OSCIPA" or "OSCIPA" means the Oklahoma State Chiropractors Independent Physicians Association, a corporation under the laws of Oklahoma; its successors, assigns, subsidiaries, divisions, groups, partnerships, joint ventures, and each entity over which it has control; and their directors, officers, managers, agents, representatives, and employees;

(D) "Defendant Bridges" means Larry M. Bridges, Defendant OSCIPA's executive director;

(E) "Defendants" mean Defendant OSCIPA and Defendant Bridges;

(F) "Messenger" means, in relation to the Defendants, Communicating to a Payer any information the Defendants have received from a Physician, or Communicating to any Physician any information the Defendants receive from any Payer;

(G) "Participating Provider Agreement" means a contract entered into by a Physician with OSCIPA allowing the Physician to participate in OSCIPA's Independent Physicians Association;

(H) "Payer" means any Person that purchases or pays for all or part of a Physician's services for itself or any other Person and includes, but is not limited to, individuals, health insurance companies, health maintenance organizations, preferred provider organizations, and employers;

(I) "Payer Contract" means a contract entered into by a Payer with OSCIPA that sets the prices and price-related terms between OSCIPA's Physician members and the Payer;

(J) "Person" means any natural person, corporation, firm, company, sole

proprietorship, partnership, joint venture, association, institute, governmental unit, or other legal entity;

(K) “Physician” means a doctor of chiropractic medicine (D.C.), a doctor of allopathic medicine (M.D.), or any other practitioner of chiropractic, allopathic, or other medicine;

(L) “Third-Party Messenger” means a Person other than Defendants that uses a “messenger model” as set forth in Statement 9(C) of the 1996 Statements of Antitrust Enforcement Policy in Health Care, 4 Trade Reg. Rep (CC) ¶ 13,153, provided that the messenger model does not create or facilitate an agreement among competitors on prices or price-related terms;

(M) “Utilization Review Services” means a service that a Defendant provides to a Payer that establishes mechanisms to monitor and control utilization of health care services and that is designed to control costs and assure quality of care by monitoring over-utilization of health care services, provided that such mechanisms are not used or designed to increase costs or utilization of health care services.

III. APPLICABILITY

This Final Judgment applies to the Defendants and to any Person, including any Physician, in active concert or participation with the Defendants, who receives actual notice of this Final Judgment by personal service or otherwise.

IV. PROHIBITED CONDUCT

The Defendants are enjoined from, in any manner, directly or indirectly:

(A) providing, or attempting to provide, any services to any Physician regarding such Physician’s actual, possible, or contemplated negotiation or contracting with any Payer, or other dealings with any Payer, except that Defendants may provide Credentialing Services and

Utilization Review Services;

(B) acting, or attempting to act, in a representative capacity, including as a Messenger or in dispute resolution (such as arbitration), for any Physician with any Payer, except that Defendants may provide Credentialing Services and Utilization Review Services;

(C) Communicating, reviewing, or analyzing, or attempting to Communicate, review, or analyze with or for any Physician, except as consistent with Section VI(A), about (1) that Physician's, or any other Physician's, negotiating, contracting, or participating status with any Payer; (2) that Physician's, or any other Physician's, fees or reimbursement rates; or (3) any proposed or actual contract or contract term between any Physician and any Payer;

(D) facilitating Communication or attempting to facilitate Communication, among or between Physicians, regarding any proposed, contemplated, or actual contract or contractual term with any Payer, including the acceptability of any proposed, contemplated, or actual contractual term, between such Physicians and any Payer;

(E) entering into or enforcing any agreement, arrangement, understanding, plan, program, combination, or conspiracy with any Payers or Physicians to raise, stabilize, fix, set, or coordinate prices for Physician services, or fixing, setting, or coordinating any term or condition relating to the provision of Physician services;

(F) requiring that OSCIPA Physician members negotiate with any Payer through OSCIPA or otherwise restricting, influencing, or attempting to influence in any way how OSCIPA Physician members negotiate with Payers;

(G) coordinating or Communicating, or attempting to coordinate or Communicate, with any Physician, about any refusal to contract, threatened refusal to contract, recommendation not to participate or contract with any Payer, or recommendation to boycott, on any proposed or

actual contract or contract term between such Physician and any Payer;

(H) responding, or attempting to respond, to any question or request initiated by any Payer or Physician relating to (1) a Physician's negotiating, contracting, or participating status with any Payer, except that Defendants may provide Credentialing Services and Utilization Review Services; (2) a Physician's fees or reimbursement rates; or (3) any proposed or actual contract or contract term between any Physician and any Payer, except to refer a Payer to a Third-Party Messenger and otherwise to state that this Final Judgment prohibits any additional response; and

(I) training or educating, or attempting to train or educate, any Physician in any aspect of contracting or negotiating with any Payer, including, but not limited to, contractual language and interpretation thereof, methodologies of payment or reimbursement by any Payer for such Physician's services, and dispute resolution such as arbitration, except that the Defendants may, provided they do not violate Sections IV(A) through IV(H) of this Final Judgment, (1) speak on general topics (including contracting), but only when invited to do so as part of a regularly scheduled medical educational seminar offering continuing medical education credit; (2) publish articles on general topics (including contracting) in a regularly disseminated newsletter; and (3) provide education to physicians regarding the regulatory structure (including legislative developments) of workers' compensation, Medicaid, and Medicare, except Medicare Advantage.

V. REQUIRED CONDUCT

(A) Defendants must terminate, without penalty or charge, and in compliance with any applicable laws, any Payer Contracts at the earlier of (1) receipt by Defendant OSCIPA of a Payer's written request to terminate such Payer Contract, (2) the earliest termination date,

renewal date (including automatic renewal date), or the anniversary date of such Payer Contract, or (3) three months from the date the Final Judgment is entered.

PROVIDED HOWEVER, a Payer Contract to be terminated pursuant to Section V(A)(2) of this Final Judgment may extend beyond any such termination, renewal, or anniversary date, by up to three months from the date the Final Judgment is entered, if:

(a) the Payer submits to Defendant OSCIPA a written request to extend such Payer Contract to a specific date no later than three months from the date that this Final Judgment is entered; and

(b) Defendant OSCIPA had determined not to exercise any right to terminate.

PROVIDED FURTHER, that any Payer making such request to extend a Payer Contract retains the right, pursuant to Section V(A) of this Final Judgment, to terminate the Payer Contract at any time.

(B) Defendant OSCIPA may distribute a revised membership agreement to its Physician members that omits any reference to collectively contracting with Payers or other services prohibited by Section IV, and that otherwise does not violate this Final Judgment. Defendants must terminate, without penalty or charge, and in compliance with any applicable laws, any Participating Provider Agreement and all other contracts relating to Payers with any OSCIPA members at the earlier of (1) receipt by Defendant OSCIPA of any Physician member's executed revised member agreement referenced in the preceding sentence, (2) receipt by Defendant OSCIPA of any Physician member's written request to terminate such Participating Provider Agreement, (3) the date all Payer Contracts applicable to a Physician member are terminated pursuant to Section V(A), or (4) three months from the date the Final Judgment is entered.

PROVIDED HOWEVER, that any clause in a Participating Provider Agreement disallowing the Physician member from contracting individually with a Payer is immediately void.

VI. PERMITTED CONDUCT

(A) The Defendants may engage in activities that fall within the safety zone set forth in Statement 6 of the 1996 Statements of Antitrust Enforcement Policy in Health Care, 4 Trade Reg. Rep. (CC) ¶ 13,153.

(B) Nothing in this Final Judgment shall prohibit the Defendants, or any one or more of Defendant OSCIPA's members, from advocating or discussing, in accordance with the doctrine established in *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961), *United Mine Workers v. Pennington*, 381 U.S. 657 (1965), and their progeny, legislative, judicial, or regulatory actions, or other governmental policies or actions.

VII. COMPLIANCE

To facilitate compliance with this Final Judgment, Defendant OSCIPA shall:

(A) distribute by first-class mail within 30 days from the entry of this Final Judgment a copy of the Final Judgment; the Competitive Impact Statement; and a cover letter that is identical in content to Exhibit A to:

(1) all of Defendant OSCIPA's directors, officers, managers, agents, employees, and representatives, who provide or have provided, or supervise or have supervised the provision of, services to Physicians; and

(2) all of Defendant OSCIPA's Physician members;

(B) distribute by first-class mail within 30 days from the entry of this Final Judgment a copy of the Final Judgment; the Competitive Impact Statement; and a cover letter that is

identical in content to Exhibit B to the chief executive officer of each Payer with whom Defendants have contracted since January 1, 2002, regarding contracts for the provision of Physician services;

(C) distribute a copy of this Final Judgment and the Competitive Impact Statement to:

(1) any Person who succeeds to a position with Defendant OSCIPA described in Section VII(A)(1), in no event shall such distribution occur more than 15 days later than such a Person assumes such a position; and

(2) any Physician who becomes a member of Defendant OSCIPA, in no event shall such distribution occur more than 15 days later than such Physician becomes a member;

(D) conduct an annual seminar explaining to all of Defendant OSCIPA's directors, officers, managers, agents, employees, and representatives, the restrictions contained in this Final Judgment and the implications of violating the Final Judgment;

(E) maintain an internal mechanism by which questions about the application of the antitrust laws and this Final Judgment from any of Defendant OSCIPA's directors, officers, managers, agents, employees, and representatives can be answered by counsel as the need arises;

(F) within ten days of receiving a Payer's written request to terminate a Payer Contract pursuant to Section V(A) of this Final Judgment, distribute, by first-class mail, return receipt requested, a copy of that request to each Physician in such Payer Contract as of the date that Defendant OSCIPA receives such request to terminate; and

(G) maintain for inspection by Plaintiff a record of recipients to whom this Final Judgment and Competitive Impact Statement have been distributed.

VIII. CERTIFICATION

(A) Within 30 days after entry of this Final Judgment, Defendant OSCIPA shall

certify to the Chief of Litigation I, Antitrust Division, that it has provided a copy of this Final Judgment to all Persons described in Sections VII(A) and VII(B) of this Final Judgment.

(B) For a period of ten years following the date of entry of this Final Judgment, the Defendants shall separately certify to the Chief of Litigation I, Antitrust Division, annually on the anniversary date of the entry of this Final Judgment that each, respectively, and all of Defendant OSCIPA's directors, officers, managers, agents, employees, and representatives, if applicable, have complied with the provisions of this Final Judgment.

IX. COMPLIANCE INSPECTION

(A) For the purposes of determining or securing compliance with this Final Judgment or determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, authorized representatives of the United States Department of Justice, including consultants and other Persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division and upon five days notice to the Defendants, be permitted:

(1) access during the Defendants' regular business hours to inspect and copy, or, at the United States' option, to require that the Defendants provide copies of all books, ledgers, accounts, records and documents in their possession, custody, or control, relating to any matters contained in this Final Judgment;

(2) to interview, either informally or on the record, Defendant Bridges or any of Defendant OSCIPA's officers, directors, employees, agents, managers, and representatives, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by the Defendants; and

(3) to obtain from the Defendants written reports or responses to written interrogatories, under oath if requested, relating to any matters contained in this Final Judgment.

(B) No information or documents obtained by the means provided in this Section shall be divulged by Plaintiff to any Person other than authorized representatives of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(C) If at any time a Defendant furnishes information or documents to the United States, the Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give the Defendant ten calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which such Defendant is not a party.

X. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XI. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XII. PUBLIC INTEREST DETERMINATION

The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

Dated: _____

UNITED STATES DISTRICT JUDGE

Exhibit A

[Letterhead of OSCIPA]

[Name and Address of Member]

Dear Member:

The U.S. District Court for the Northern District of Oklahoma has entered a Final Judgment prohibiting Oklahoma State Chiropractors Independent Physician Association (“OSCIPA”) and Larry Bridges from collectively contracting with payers or engaging in group boycotts against payers. A copy of the Final Judgment and a Competitive Impact Statement prepared in accordance with the Antitrust Penalties and Procedures Act, 15 U.S.C. § 16, is enclosed.

In order that you may readily understand the terms of the Final Judgment, we have set forth its essential provisions and describe its application to OSCIPA’s payer contracting activities, although you must realize the Final Judgment is controlling, rather than the following explanation of provisions.

(1) OSCIPA and Larry Bridges are prohibited from negotiating or contracting with payers on behalf of any physician, except to provide credentialing and utilization review services.

(2) OSCIPA and Larry Bridges are prohibited from reviewing or analyzing any contractual terms between a physician and a payer, and are prohibited from communicating about a physician’s negotiation or contracting with any payer.

(3) OSCIPA and Larry Bridges are prohibited from engaging in conduct that promotes members’ collective boycotts or refusals to contract with payers.

(4) OSCIPA and Larry Bridges may not require that OSCIPA members negotiate with payers through OSCIPA.

(5) OSCIPA and Larry Bridges may not respond to any question or request initiated by a payer relating to (a) a physician’s negotiating, contracting, or participating status with any payer, except to provide credentialing or utilization review services; (b) a physician’s fees or reimbursement rates; or (c) any proposed or actual contract or contract term between any physician and any payer, except to refer a payer to a third-party messenger and otherwise to state that the Final Judgment prohibits any additional response.

(6) All of OSCIPA’s contracts with payers currently in effect generally must be

cancelled upon, whichever comes first, written request by a payer to terminate, the termination date, renewal date, or anniversary date of such contract, or within three months from the date of the entry of the Final Judgment.

(7) All of OSCIPA's contracts with its members currently in effect must be cancelled upon, whichever comes first, written request by a member to terminate, when all payer contracts between OSCIPA and a payer applicable to that member have been terminated, or within three months from the date of the entry of the Final Judgment. Provided, however, that nothing shall prohibit OSCIPA and its member from entering into new membership agreements that comply with the terms of the Final Judgment. OSCIPA will send you under separate cover a new membership agreement that complies with the terms of the Final Judgment.

(8) OSCIPA members and their practice groups may immediately contract individually with payers.

If you have any questions, please do not hesitate to contact me.

Sincerely,

[Appropriate OSCIPA representative]

Exhibit B

[Letterhead of OSCIPA]

[Name and Address of Payer's CEO]

Dear [_____]:

Enclosed is a copy of a Final Judgment, issued by the U.S. District Court for the Northern District of Oklahoma, and a Competitive Impact Statement, issued in accordance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, against the Oklahoma State Chiropractors Independent Physician Association ("OSCIPA"), and Larry Bridges.

Pursuant to Section V Paragraph A of the Final Judgment, all payer contracts with OSCIPA will terminate at the earlier of (1) receipt by OSCIPA of a payer's written request to terminate such contract, (2) the earliest termination date, renewal date (including automatic renewal date), or the anniversary date of such contract, or (3) three months from the date the Final Judgment is entered. OSCIPA members and their practice groups may immediately contract individually with payers.

If your contract expires prior to a date that is three months from the date the Final Judgment is entered, you may request an extension of the contract to a date no later than three months from the date the Final Judgment is entered. If you choose to extend the term of the contract to the extent permitted by the Final Judgment, you may later terminate the contract at any time.

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

Sincerely,

[Appropriate OSCIPA representative]