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February 15, 1996

VIA UPS

Anne K. Bingaman, Esq.
Assistant Attorney General
United States Department of Justice
Antitrust Division
Main Justice Building
10th and Constitution Avenue, N.W.
Washington, D.C. 20530

Re: Request for Business Review Letter Concerning an Independent Practice
Association: Cincinnati Regional Orthopaedic and Sports Medicine Associates, Inc.

Dear Assistant Attorney General Bingaman:

This firm represents Cincinnati Regional Orthopaedic and Sports Medicine Associates, Inc. ("CROSMA"), which is an independent practice association ("IPA"). On its behalf, we respectfully request that the Antitrust Division of the United States Department of Justice ("Department"), pursuant to the provisions of 28 C.F.R. § 50.6, review and state its present enforcement intentions with respect to the proposed activities of CROSMA. We hope that the information that follows is sufficiently detailed to enable you to determine whether the Department has any substantial concerns about CROSMA and its proposed activities as a "physician network joint venture." If you need additional information or clarification of any kind, please feel free to contact me.

I. BACKGROUND INFORMATION ABOUT CROSMA

CROSMA is an Ohio professional corporation, the shareholders of which are orthopaedic surgery groups and individual physicians (the "Providers") in the Cincinnati, Ohio metropolitan local market area (the "Area").¹ At present, there are fifty six (56) individual surgeons within

¹ We believe the local market area has been defined appropriately by the Greater Cincinnati Hospital Council ("GCHC"), which is a voluntary association of hospitals in the region. GCHC has defined the relevant geographic marketplace as comprising 35 hospitals in the greater Cincinnati metropolitan area which comprises 28 counties in Ohio, Kentucky

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CROSMA, who are organized into ten (10) separate physician groups. These physicians are licensed by the State of Ohio, are either board-eligible or board-certified orthopaedic specialists, and, as a group, hold medical staff membership and clinical privileges at all of the major hospitals and ambulatory surgery centers in the Area. These physicians, who provide a full range of orthopaedic surgery services, have elected to form an IPA for the purpose of negotiating payor contracts on a collective basis. CROSMA presently intends to enter into capitated contracts only. It is possible that, in the future, CROSMA might enter into fee-for-service contracts, provided such contracts require a withhold of at least twenty percent (20%), whereby the managed care organization or third-party payor withholds fees earned pending the achievement of articulated cost effectiveness goals.

The primary function of CROSMA is to serve as a single negotiating and contracting entity on behalf of the Providers affiliated with it. CROSMA has been formed in response to a perceived market demand for more efficient methods for managed care organizations and other third-party payors to negotiate, on a capitated basis, for the clinical services offered by the Providers. See enclosed letter from Humana Health Care Plan of Ohio, Inc., expressing a desire to work with entities like CROSMA. Under current Ohio law, CROSMA is not subject to additional review by any regulatory agency.

CROSMA has contracted with 56 of the approximately 158 orthopaedic surgeons in the Area (either directly or through their respective professional corporations/group practices). CROSMA is not an exclusive physician network joint venture, since no physician will be precluded contractually by CROSMA from joining competitive networks or contracting directly with payors,² and the payors remain free to contract with other providers.

CROSMA will establish utilization standards and develop and implement other methods that will help to contain health care costs and improve quality. CROSMA will perform traditional IPA functions, including utilization review and management, quality management, peer review, credentialing, medical education, as well as financial and administrative functions such as billing and collection.

and Indiana. The GCHC definition of the local market area is significantly larger than the Cincinnati Standard Metropolitan Statistical Area ("SMSA"), but the SMSA is essentially the core of the larger market area.

² The standard CROSMA Independent Contractor Agreement states in pertinent part (Section 5(D)): "[n]othing contained in this Agreement is intended to limit the Provider's ability to participate in any contracts or arrangements with other parties to provide services to patients."

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II. "SAFETY ZONE" AND "RULE OF REASON" ANALYSIS FOR A PHYSICIAN NETWORK JOINT VENTURE

A. CROSMA Physicians Comprise Approximately Thirty Five Percent (35%) of the Orthopaedic Specialists in the Area.

Enclosed herewith is an "Analysis of Local Market Share for Cincinnati Regional Orthopaedic and Sports Medicine Associates, Inc.," which was prepared by an independent consultant. It sets forth data demonstrating that CROSMA physicians comprise approximately thirty five percent (35%) of the orthopaedic specialists in the Area. The market analysis applied several methodologies in an effort to reasonably approximate CROSMA's market position. The analysis focused on four measures of market power; (1) the percentage of orthopaedic surgeons within CROSMA as compared to the market total; (2) the percentage of total office visits to CROSMA physicians versus the market total; (3) the percentage of orthopaedic surgical hospital cases performed by CROSMA physicians versus the market total; and (4) the percentage of joint replacement procedures performed by CROSMA physicians versus the market total. Significantly, the results ranged from a low of 34.6% to a high of 37.9%, which suggests a high degree of reliability.

While we recognize that CROSMA's present composition exceeds slightly the thirty percent (30%) threshold for "safety zone" treatment where only capitated contracts are sought, we believe that the non-exclusive nature of CROSMA, and the procompetitive effects of the venture, should permit the Department to signal its approval of CROSMA under a "rule of reason" analysis.

B. The Competitive Effects of CROSMA

For several reasons, we do not believe that the operations of CROSMA would raise the prices charged to health plans for orthopaedic services in the Area above competitive levels. First, CROSMA physicians comprise only thirty five percent (35%) of the relevant geographic market, and therefore lack the market power that would enable CROSMA to artificially inflate prices. Second, because CROSMA is a non-exclusive joint venture, even physicians within it will be able to compete for payor contracts. Third, there are a significant number of competing payors in the Area -- each of which is striving to contract with lower cost providers. Thus, if CROSMA is unwilling to contract with payors at prices consistent with the market, we believe that CROSMA will lose existing business opportunities to more competitive providers. Fourth, CROSMA lacks the power to prevent the formation of other orthopaedic surgery joint ventures that would compete with it.

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Clearly, as a non-exclusive physician network joint venture, the anticompetitive risks that CROSMA poses are substantially less than if CROSMA was exclusive. Indeed, the physicians specifically rejected the possibility of forming as an exclusive network to ensure, among other things, each physician's freedom to pursue alternative ventures in the future. A significant number of the physicians already participate in physician hospital organizations ("PHOs") and other preferred provider organizations ("PPOs"), which will compete directly with CROSMA.

C. Procompetitive Efficiencies Will Be Achieved, Principally Because Physicians Share Substantial Financial Risk Within CROSMA.

As noted above, CROSMA currently intends to enter into only capitated payment contracts, thereby shifting risk from the payor to CROSMA, and ultimately the participating physicians. This is a classic method by which the activities of an IPA can reduce health care costs. In the event that discount fee-for-service contracts are sought, CROSMA will be subject to withhold mechanisms used by other similar joint ventures, which the Department has previously approved and which result in substantial risk sharing by the joint venture participants.

In addition, CROSMA will enhance the quality of health care services, and assist the physicians in achieving greater efficiency, cost containment and quality, through utilization review and management, quality management, peer review, credentialing, medical education, and centralized business and administrative functions. CROSMA's goal is to eliminate the need for third-party payors to negotiate payment terms individually with each physician group, and to relieve the physicians of that same burden. Further, by centralizing within CROSMA the practice review functions noted above, additional efficiencies and cost savings will be achieved for the physician practices. Overall, it is intended that CROSMA will lower physician administrative costs and overhead, improve patient care management and quality, increase patient satisfaction, and reduce health care costs.

D. There Are No Collateral Agreements or Conditions That Will Unreasonably Restrict Competition. Further, CROSMA Has Developed Safeguards that will Avoid the Potential for Collusion Among Physicians.

Enclosed herewith are the following salient legal documents that govern the activities of CROSMA and its physician members. They are: (1) Articles of Organization; (2) Close Corporation Agreement; and (3) Standard Independent Contractor Agreement (Provider Agreement). There are no other written agreements or oral understandings that will unreasonably restrict competition.

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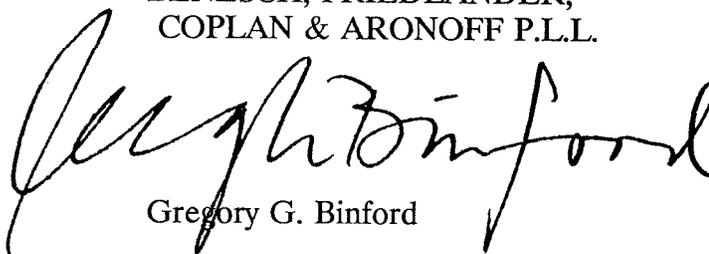
CROSMA also has developed safeguards to ensure that the Providers cannot act collusively to artificially affect fees and charges. For example, no Provider will have access to any other Provider's fee and charge information. In the event fee or charge information must be analyzed, CROSMA physicians will submit that information to a consultant bound by an appropriate confidentiality agreement. This commonly used approach will ensure that no physician has access to fee or charge information of any other competing physician. Further, payor contract terms will be developed through the "messenger model," whereby an intermediary/negotiator, again bound by an appropriate confidentiality agreement, will discuss fee and charge information with each Provider in confidence during the contract negotiation process. Overall, CROSMA has erected meaningful barriers against impermissible collusive action concerning fees and charges. In no event will CROSMA, on behalf of its members, threaten to engage in a boycott to coerce third-party payors to accept its collectively-determined fees.

III. CONCLUSION

For the foregoing reasons, we believe that CROSMA's existence and operation in the Area will be of benefit to the purchasers of health care services, and therefore, respectfully request that the Department of Justice issue a business review letter indicating that it has no intention of challenging CROSMA. On CROSMA's behalf, we thank you for your consideration.

Very truly yours,

BENESCH, FRIEDLANDER,
COPLAN & ARONOFF P.L.L.

A handwritten signature in black ink, appearing to read "Gregory G. Binford", written in a cursive style.

Gregory G. Binford

GGB:db
Enclosure