

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA

American Chiropractic Association, Inc. )  
a non-profit corporation, Virginia )  
Chiropractic Association, Inc., George W. )  
Chirikinian D.C., Douglas M. Cox D.C., )  
William R. Thesier D.C., John C. Willis )  
D.C., Jerry R. Willis D.C., Sarah )  
Elizabeth Allen, Lana Kay Ball, )  
Margaret Byrne, Roger Dalton, Mary )  
Sue Dean, Harvie Lee French, Jr., ) CASE NO.  
Patricia Herman, Cindy Linkenhoker, ) Judge  
Sandra Phillippi, Darlene Requizo, David )  
Russotto, Gloria Jean Smith, Lynn D. )  
Wagner, Andrea Wallace, Patricia ) Trial by Jury Demanded  
Whittington, Benis D. Wood, Richard D. )  
Worley, and Dale Duke Yontz, )  
)  
Plaintiffs, )  
)  
v. )  
)  
Trigon Healthcare, Inc., Trigon )  
Insurance Co., Trigon Administrators, )  
Inc., Mid-South Insurance Company, )  
Trigon Health and Life Insurance )  
Company, Blue Cross and Blue Shield )  
Association )  
Defendants. )

COMPLAINT

Preamble

1. This Complaint alleges that the defendants have, individually and acting in concert, wrongfully harmed the plaintiffs by: an unlawful anticompetitive combination and conspiracy among Trigon companies, medical doctors, and Blue Cross and Blue Shield Association that violates the antitrust laws of the United States; by a pattern of racketeering activity by Trigon companies that includes extortion, mail fraud, wire fraud, and securities fraud and that violates the Racketeer Influenced and Corrupt Organizations Act ("RICO"); by unlawfully discriminating against chiropractic including increasing the cost to persons covered by Trigon healthcare plans of chiropractic care as compared to care by a medical doctor and paying discriminatory and inadequate compensation to doctors of chiropractic for chiropractic treatment; by conspiring to injure the practices of doctors of chiropractic by a common law conspiracy and in violation of Virginia law, Va. Ann. Code §§18.2-499 and 500; and by breaching obligations implied in the law of Virginia to reasonably compensate doctors of chiropractic for treatment of persons covered by Trigon healthcare plans. Plaintiffs allege upon knowledge as to themselves and their own acts and upon information and belief as to other matters based on,

observations, experience, and investigation by themselves, their agents, and attorneys.

#### Introduction

2. The plaintiffs, the American Chiropractic Association, Inc. ("ACA") and Virginia Chiropractic Association ("VCA") bring this action on behalf of their members, doctors of chiropractic, and their patients. The plaintiff individual doctors of chiropractic bring this action on behalf of themselves and their patients. Plaintiffs ACA, VCA, and doctors of chiropractic seek to recover damages, enhanced damages, punitive damages, costs including attorneys' fees, and equitable relief precluding defendants from engaging in wrongful acts that deny access to treatment by a licensed doctor of chiropractic to persons covered by healthcare plans sold and/or administered by Trigon Healthcare, Inc. and its subsidiaries (collectively "Trigon") and/or impede and discourage those persons from seeking treatment by doctors of chiropractic. Plaintiffs ACA, VCA, and the individual doctors of chiropractic seek reasonable compensation for services rendered by doctors of chiropractic to persons covered by healthcare plans sold and/or administered by Trigon ("Trigon healthcare plans") and for which doctors of chiropractic have received no compensation or otherwise unconscionably inadequate compensation. Plaintiff individuals who are patients of doctors of chiropractic and who are or have been covered by Trigon healthcare plans seek compensation for costs of care by a doctor of chiropractic that have not been covered by healthcare plans administered by Trigon and damages and enhanced damages for being denied care by a doctor of chiropractic by Trigon's anti-chiropractic policies and practices.

3. Over the years anti-chiropractic bias has existed in insurance companies and other organizations providing prepaid healthcare in spite of the recognition and licensing of chiropractic in all fifty states, in spite of laws passed by States prohibiting discrimination against doctors of chiropractic, and in spite of laws passed by Congress to insure access to chiropractic care by patients enrolled in government sponsored, managed healthcare programs. Certain Blue Shield healthcare plans have, in the past, been shown to exclude coverage of chiropractic services even when state law required coverage of chiropractic treatment.

4. The actions of defendants complained of here, and the bias demonstrated by defendants, is, on information and belief and historical fact, a result of medical doctors' strong influence on and dominating presence within Trigon and a result of defendants' desire to control and reduce access to chiropractic healthcare by persons covered by Trigon healthcare plans. Upon information and belief, defendants, acting individually and in concert, have entered into a scheme to render chiropractic a secondary and marginal treatment to which access by persons covered by Trigon healthcare plans is severely restricted or eliminated altogether.

#### Parties

5. Plaintiff, ACA is a non-profit corporation organized under the laws of the State of Delaware. ACA's membership includes doctors of chiropractic who provide chiropractic treatment to patients throughout the Commonwealth of Virginia. ACA's address is 1701 Clarendon Blvd., Arlington, Virginia 22209.

6. Plaintiff, VCA is a non-profit professional association organized under the laws of the Commonwealth of Virginia. VCA's membership includes doctors of chiropractic who provide chiropractic treatment to

patients throughout the Commonwealth of Virginia. VCA's address is 1909 Huguenot Rd., Suite 103, Richmond, Virginia 23235 (mailing address: PO Box 35231, Richmond, Virginia 23235).

7. Plaintiff George W. Chirikinian D.C. is a chiropractor who is licensed to practice in the Commonwealth of Virginia. Dr. Chirikinian's office is in Richmond, Virginia.

8. Plaintiff Douglas M. Cox D.C. is a chiropractor who is licensed to practice in the Commonwealth of Virginia. Dr. Cox's office is in Charlottesville, Virginia.

9. Plaintiff William R. Thesier D.C. is a chiropractor who is licensed to practice in the Commonwealth of Virginia. Dr. Thesier's office is in Virginia Beach, Virginia.

10. Plaintiff John C. Willis D.C. is a chiropractor who is licensed to practice in the Commonwealth of Virginia. Dr. Willis' office is in Richlands, Virginia.

11. Plaintiff Jerry R. Willis D.C. is a chiropractor who is licensed to practice in the Commonwealth of Virginia. Dr. Willis' office is in Wytheville, Virginia.

12. Sarah Elizabeth Allen is a resident of Richmond, Virginia who is a patient of a doctor of chiropractic and who is covered by a healthcare plan that is administered by Trigon.

13. Lana Kay Ball is a resident of Cedar Bluff, Virginia who is a patient of a doctor of chiropractic and who is covered by a healthcare plan that is administered by Trigon.

14. Margaret Byrne is a resident of Palmyra, Virginia who is a patient of a doctor of chiropractic and who is covered by a healthcare plan that is administered by Trigon.

15. Roger Dalton is a resident of Rural Retreat, Virginia who is a patient of a doctor of chiropractic and who is covered by a healthcare plan that is administered by Trigon.

16. Mary Sue Dean is a resident of Cedar Bluff, Virginia who is a patient of a doctor of chiropractic and who is covered by a healthcare plan that is administered by Trigon.

17. Harvie Lee French, Jr. is a resident of Bland, Virginia who is a patient of a doctor of chiropractic and who is covered by a healthcare plan that is administered by Trigon.

18. Patricia Herman is a resident of Midlothian, Virginia who is a patient of a doctor of chiropractic and who is covered by a healthcare plan that is administered by Trigon.

19. Cindy Linkenhoker is a resident of Suffolk, Virginia who is a patient of a doctor of chiropractic and who is covered by a healthcare plan that is administered by Trigon.

20. Sandra Phillippi is a resident of Wytheville, Virginia who is a patient of a doctor of chiropractic and who is covered by a healthcare plan that is administered by Trigon.

21. Darlene Requizo is a resident of Chesapeake, Virginia who is a patient of a doctor of chiropractic and who is covered by a healthcare plan that is administered by Trigon.

22. David Russotto is a resident of Virginia Beach, Virginia who is a patient of a doctor of chiropractic and who is covered by a healthcare plan that is administered by Trigon.

23. Gloria Jean Smith is a resident of Cedar Bluff, Virginia who is a patient of a doctor of chiropractic and who is covered by a healthcare plan that is administered by Trigon.

24. Lynn D. Wagner is a resident of Midlothian, Virginia who is a patient of a doctor of chiropractic and who is covered by a healthcare plan that is administered by Trigon.

25. Andrea Wallace is a resident of Richlands, Virginia who is a patient of a doctor of chiropractic and who is covered by a healthcare plan that is administered by Trigon.
26. Patricia Whittington is a resident of Richlands, Virginia who is a patient of a doctor of chiropractic and who is covered by a healthcare plan that is administered by Trigon.
27. Benis D. Wood is a resident of Keswick, Virginia who is a patient of a doctor of chiropractic and who is covered by a healthcare plan that is administered by Trigon.
28. Richard D. Worley is a resident of Bluefield, West Virginia who is a patient of a doctor of chiropractic and who is covered by a healthcare plan that is administered by Trigon.
29. Dale Duke Yontz is a resident of Wytheville, Virginia who is a patient of a doctor of chiropractic and who is covered by a healthcare plan that is administered by Trigon.
30. Defendant Trigon Healthcare, Inc. is a corporation of the Commonwealth of Virginia. Trigon Healthcare, Inc.'s principal place of business is in Richmond, Virginia.
31. Defendant Trigon Insurance Company is a corporation of the Commonwealth of Virginia. Defendant Trigon Insurance Company does business as "Trigon Blue Cross Blue Shield." Defendant Trigon Insurance Company was formerly known as "Blue Cross and Blue Shield of Virginia." Defendant Trigon Insurance Company is wholly owned by Trigon Healthcare, Inc.
32. Defendant Trigon Administrators, Inc. is a corporation of the Commonwealth of Virginia. Defendant Trigon Administrators, Inc. is wholly owned by Trigon Healthcare, Inc.
33. Defendant Mid-South Insurance Company is a corporation of the State of North Carolina. Defendant Mid-South Insurance Company has its principal place of business in Richmond, Virginia. Defendant Mid-South Insurance Company is wholly owned by Trigon Healthcare, Inc.
34. Defendant Health and Life Insurance Company is a corporation of the Commonwealth of Virginia. Defendant Health and Life Insurance Company is wholly owned by Trigon Healthcare, Inc.
35. Defendant Blue Cross and Blue Shield Association is a corporation of the State of Illinois. Blue Cross and Blue Shield Association's principal place of business is in Chicago, Illinois.

#### Jurisdiction and Venue

36. This Court has jurisdiction over this action pursuant to 15 U.S.C. §§ 15 and 26, 18 U.S.C. §1964, and 28 U.S.C. §§ 1331, 1337, and 1367.
37. Venue is proper in this judicial district pursuant to 15 U.S.C. § 22, 18 U.S.C. §1965, 28 U.S.C. § 1391(b).

#### Background

##### Chiropractic Healthcare

38. Chiropractic is a licensed healthcare profession in all fifty states and the District of Columbia. Chiropractic healthcare treatment is being sought by more and more people. It has been estimated that some 25 million patients will seek treatment from a doctor of chiropractic this year.
39. Chiropractic is concerned largely with the nerves, muscles, and skeleton, the neuromusculoskeletal system. Chiropractic seeks to reduce or eliminate pain and other symptoms by manual positioning of bones to correct abnormalities. The large majority of the practice of chiropractic is adjustment of the spine to treat abnormalities in the

position of the spine, referred to as subluxations, which cause pain and other symptoms.

40. The chiropractic term "subluxation" denotes both a science and a philosophy of diagnosis and treatment:

A spinal subluxation may be defined as an alteration of the normal statics and dynamics of the anatomical or physiological relationships of the spinal vertebrae and its resulting biomechanical and/or neurophysiological effects. These effects may be local, that is at the site of the subluxation and/or distal to the subluxation causing dysfunction to other tissues, organs and systems, directly or indirectly affected by the subluxation. N.B. See subluxation p. 275.

Chiropractor's Manual, Laurent Boisvert, 1993, p. 91.

41. Medical physicians, osteopathic physicians and physical therapists are not qualified by education and training to diagnose spinal subluxations or to perform manual manipulation of the spine to correct a subluxation. To a medical doctor, a spinal "subluxation" connotes a complete dislocation of the spine that is untreatable by manual manipulation.

42. Chiropractic has been regulated by the Commonwealth of Virginia since 1920. Licensure of chiropractic is provided for by title 54.1 of the Code of Virginia, chapter 29, article 3.

43. Chiropractic, as defined by Title 54.1 of the Code of Virginia, "means the adjustment of the twenty-four moveable vertebrae of the spinal column, and assisting nature for the purpose of normalizing the transmission of nerve energy, but does not include the use of surgery, obstetrics, osteopathy or the administration or prescribing of any drugs or medicines." Va. Ann. Code §54.1-2900.

44. The Commonwealth of Virginia requires that health insurance coverage be provided to state employees and retired state employees that includes coverage of chiropractic treatment. Va. Ann. Code §2.1-20.1.A.1.

45. The Commonwealth of Virginia requires that insurance policies covering liability arising from operation of an automobile cover chiropractic treatment. Va. Ann. Code §38.2-2201.1.

46. The Commonwealth of Virginia prohibits insurers from refusing reimbursement for a covered service because the service was provided by a licensed chiropractor. Va. Ann. Code §§38.2-2203, 38.2-3408, 38.2-4221, and 38.2-4312(E).

47. The number of doctors of chiropractic licensed by the Commonwealth of Virginia has grown from 493 in 1987 to 1,268 in 1996. There are now more than 1500 doctors of chiropractic licensed by the Commonwealth of Virginia.

Unlawful Discrimination Against Chiropractic by Medical Doctors

48. Chiropractors have long suffered from illegal, anti-competitive prejudice at the hands of the medical community. In 1963, the American Medical Association ("AMA") established a "Committee on Quackery" which considered "its prime mission to be, first, the containment of chiropractic and ultimately, the elimination of chiropractic."

49. The United States District Court for the Northern District of Illinois found that the AMA instituted an unlawful boycott of chiropractic intending to prevent all medical physicians in the United States from referring patients to chiropractors and from accepting referrals of patients from chiropractors, to prevent chiropractors from obtaining access to hospital diagnostic services and membership on hospital medical staffs, to prevent medical physicians from teaching at chiropractic colleges or engaging in any joint research, and to prevent

any cooperation whatsoever between the two professional groups in the delivery of healthcare services.

50. In 1988, a United States District Court, in an antitrust action brought by a group of chiropractors, found that the AMA, by far the largest and most powerful association of medical doctors, organized and led a nationwide, illegal conspiracy to "contain and eliminate" the profession of chiropractic in the United States. *Wilk v. American Medical Ass'n.*, 671 F.Supp. 1465, 1471 (N.D. Ill. 1987). The conspiracy included, inter alia, an effort to ban all voluntary professional association between medical doctors, medical institutions, insurance programs, etc., and doctors of chiropractic. Affirming that decision, the United States Court of Appeals for the Seventh Circuit noted: "Indeed, the [district] court found that the AMA intended to 'destroy a competitor,' namely chiropractors." *Wilk v. AMA*, 895 F.2d 352, 361 (7th Cir. 1990), cert. den. The Seventh Circuit approved the equitable relief granted by the district court: "The district court's form of injunction and method of ensuring its publication (and thus its efficacy) was a reasonable attempt at eliminating the consequences of the AMA's lengthy, systematic, successful, and unlawful boycott." *Id.* at 371.

51. Anti-chiropractic bias in the world of health care, such as that which was proven to have been embraced by the AMA, its members, and its related medical doctor and health care organizations, has existed throughout the second half of the twentieth century. That bias survives today in spite of the fact that chiropractic care has been shown to be as effective, or more effective, than "traditional" medicine for certain common painful and debilitating ailments. Chiropractic can now be called a secondary, alternative, or nontraditional treatment based only on suppression of chiropractic and the continuing effects of past open and unlawful attempts of the AMA and others to suppress and destroy chiropractic.

Discrimination Against Chiropractic by Providers of Health Insurance

52. Recognizing that insurance coverage of healthcare expenses is a powerful tool that could direct patients to providers whose services were covered by healthcare insurance, the AMA sought to achieve its goal of containing and eliminating chiropractic by preventing private health insurance from covering treatment by doctors of chiropractic.

53. In 1973 the AMA worked with medical doctor dominated insurance companies to prevent any insurance payments for chiropractic services. For example, AMA staff met with Blue Shield to prevent insurance payments for chiropractic services:

CHIROPRACTIC COVERAGE UNDER BLUE SHIELD -

[AMA] Staff will continue to maintain liaison with the National Association of Blue Shield Plans in regard to chiropractic attempts to gain coverage under Blue Shield. (NOTE: A productive meeting was held with representatives of Blue Shield on this point. They are actively considering various methods of excluding doctors of chiropractic from Blue Shield coverage.)

(Exhibit A at II.d, attached hereto, emphasis added.); and

1. We [Blue Shield] have filed and may use in 6 states an exclusion deleting manipulative services and subluxations for the purpose of removing nerve interference. Basically, the exclusion extends to services of a chiropractor by definition.

(Exhibit B at B.1, attached hereto, emphasis added.); and

Resistance to chiropractic payment may be indicated by the fact that fewer [Blue Shield]Plans make payment than the laws require.

(Exhibit C at p. 2, , attached hereto).

54. Health insurance plans have continued to discriminate against chiropractic by imposing coverage limits based on treatments provided by chiropractors rather than based on coverage of treatment of a patient's condition, even where such discrimination is specifically illegal. In one case, a maximum annual benefit of \$500.00 for "spinal manipulative therapy and any physical therapy type modalities rendered in connection therewith by an osteopathic physician, chiropractor or medical doctor" was held to be void under a state's statute requiring reimbursement for covered services provided by a doctor of chiropractic and voiding any terminology deemed discriminatory against chiropractic. *Nosser v. Health Fund Trust Fund Bd.*, 666 So.2d 1272 (La.Ct. App. 1996). Even though the limitation literally applied to services provided by other licensed providers, the court recognized that in substance and effect, that limitation discriminates against chiropractic. *Id.* at 1276 - 77.

55. Trigon's heritage includes predecessor Blue Shield plans that were controlled by medical doctors and that discriminated against other non-medical doctor healthcare providers, clinical psychologists. See *Va. Academy of Clinical Psy. v. Blue Shield of Va.*, 624 F.2d 476, (4th Cir. 1980).

56. Trigon Insurance company's predecessor, Blue Cross and Blue Shield of Virginia, extended coverage of chiropractic to all healthcare plans in 1988 only after the Commonwealth of Virginia adopted insurance equality laws that prohibited refusal to reimburse a licensed chiropractor for providing covered services. Simultaneously with offering that coverage, Blue Cross and Blue Shield of Virginia adopted a \$500.00 annual limit on reimbursement for spinal manipulation, even for plans that had previously covered chiropractic treatment without such a limit. Exhibit D.

Blue Cross and Blue Shield Trademarks and Service Marks Provide Significant Economic Power to Sellers of Healthcare Plans

57. Blue Cross and Blue Shield Association owns trademarks and service marks for healthcare related products and services that incorporate the terms "Blue Cross", "Blue Shield", or both ("Blue Cross/Blue Shield marks").

58. Blue Cross and Blue Shield Association, its predecessors, and licensees of Blue Cross/Blue Shield marks have, for many years, promoted insurance products and services sold under the Blue Cross/Blue Shield marks.

59. Blue Cross /Blue Shield marks are recognized by 99 percent of consumers who associate those marks with "quality, dependability, choice, and nationwide acceptance."

60. The number of people covered by Blue Cross and Blue Shield healthcare plans has increased every year for the last four years.

61. As a consequence of this wide recognition, the exclusive right to sell products and services under the Blue Cross/Blue Shield marks provides a licensee of the marks a significant competitive advantage and significant economic power.

62. Blue Cross and Blue Shield Association licenses Blue Cross/Blue Shield marks to insurance companies for exclusive use in geographic regions of the United States. Within its region of exclusivity, an

insurance company that has licensed Blue Cross/Blue Shield marks faces no competition from products or services sold under the Blue Cross/Blue Shield marks.

63. The Blue Cross and Blue Shield system of healthcare plans "is coordinated by the Blue Cross and Blue Shield Association."

64. As a matter of fundamental trademark law of the United States, in coordinating the system of Blue Cross and Blue Shield healthcare plans, Blue Cross and Blue Shield Association must require that products and services offered under the Blue Cross/Blue Shield marks conform to standards that the public has come to expect of products and services sold under those marks. To assure that products and services offered by licensees under the Blue Cross/Blue Shield marks conform to those standards, Blue Cross and Blue Shield Association must act in concert with licensees of the Blue Cross/Blue Shield marks and approve of the products and services with which licensees use Blue Cross/Blue Shield marks.

65. Blue Cross and Blue Shield Association permits the Blue Cross/Blue Shield marks to be used by licensees including Trigon to sell products and services that unfairly discriminate against doctors of chiropractic and their patients. In fact, state chiropractic associations from approximately eighteen (18) different states have recently reported that the Blue Cross and Blue Shield Association licensee in each respective state has instituted some form of anti-chiropractic policy.

Count I - Combination and Conspiracy in Restraint of Interstate Commerce - Trigon Companies, Blue Cross and Blue Shield Association, and Medical Doctors

66. Plaintiffs repeat the allegations of paragraphs 1 - 65.

67. Trigon Healthcare, Inc. "is the largest managed healthcare company in Virginia." Trigon Healthcare Inc. wholly owns Trigon Insurance Co., Trigon Administrators, Inc., Trigon Health and Life Insurance Company and other corporations that sell healthcare insurance and/or administer healthcare plans.

68. Until this year, Trigon Healthcare Inc. wholly owned Mid-South Insurance Company.

69. Trigon Healthcare, Inc. and its subsidiaries paid more than \$2.8 billion in 1999 to healthcare providers for medical and other benefit costs of programs that they administered.

70. Trigon Healthcare, Inc. and its subsidiaries administer healthcare plans that cover approximately 32% of the residents of Virginia, which is approximately 43% of those covered by private insurance.

71. The number of persons covered by healthcare plans administered by Trigon is growing. Enrollment in those plans in Virginia increased approximately 8 % from 1998 to 1999.

72. The number of persons covered by healthcare plans sold by Trigon increased by 14.5% from June 30, 1999 to June 30, 2000, and the number of persons covered by preferred provider organization ("PPO") healthcare plans sold by Trigon increased 36 % from June 30, 1999 to June 30, 2000.

Trigon's Policies Concerning Healthcare Providers, Including Doctors of Chiropractic,

are Determined and Administered by Medical Doctors

73. Trigon Healthcare, Inc.'s wholly owned subsidiaries adhere to and enforce policies concerning healthcare providers that are determined by Trigon Healthcare, Inc.

74. The policies of Trigon Healthcare, Inc. that relate to healthcare providers, both institutions and individual healthcare practitioners, must be approved by a committee of the board of directors of Trigon Healthcare, Inc., the Provider Policy Committee.

75. The Provider Policy Committee of the Board of Directors of Trigon Healthcare, Inc. "reviews management proposals and makes recommendations to the Board of Directors of Trigon Healthcare, Inc. with respect to Trigon's policies and procedures that have a substantial impact upon institutional and professional providers of healthcare services."

76. The Provider Policy Committee consists of six members, four of whom, including the committee chairman, are medical doctors. Though the Provider Policy Committee is a committee of the Board of Directors of Trigon Healthcare, Inc., two of the medical doctor members of that committee are not directors of Trigon Healthcare, Inc. One of those non-director members of the Provider Policy Committee is Lawrence E. Blanchard III M.D., immediate past president of the Medical Society of Virginia.

77. Medical doctors hold other positions within Trigon Healthcare, Inc. and within its wholly owned subsidiaries that are responsible for administering and executing policies concerning healthcare providers including J. Lawrence Colley, M.D., Trigon Insurance Co.'s vice president and medical director.

Medical Doctors Compete With Chiropractors and Have A Competitor's Interest in Trigon's Policies Concerning Healthcare Providers

78. It has long been established that doctors of medicine, doctors of osteopathy, and doctors of chiropractic provide competing services - i.e., patients may substitute one provider for the other based on satisfaction, perceived wellbeing, insurance coverage, etc.

79. Chiropractors and medical doctors compete with each other in the market for healthcare services, and particularly in the submarket for treatment of neuromusculoskeletal conditions of the back.

80. Medical doctors who determine policies of Trigon Healthcare, Inc. and its subsidiaries have an interest in the market for healthcare services that derives from their profession as a medical doctor and that is distinct from and in addition to their interest as a director, officer, agent, and employee of Trigon Healthcare, Inc. and/or its subsidiaries.

Healthcare Plans Sold by Trigon Under the Blue Cross/Blue Shield Marks Conform to the Requirements of the Blue Cross and Blue Shield Association

81. Trigon has licensed from Blue Cross and Blue Shield Association the exclusive right to use the Blue Cross /Blue Shield marks within the Commonwealth of Virginia other than a small portion of the northern Virginia suburbs adjacent to Washington D.C.

82. Trigon sells healthcare plans under the Blue Cross/Blue Shield marks that conform to the requirements imposed by the Blue Cross and Blue Shield Association pursuant to the agreement between Trigon and Blue Cross and Blue Shield Association granting Trigon rights to use the Blue Cross/Blue Shield marks.

83. Blue Cross and Blue Shield Association knowingly permits Trigon Insurance, Inc. to offer healthcare plans and services under the Blue Cross /Blue Shield marks that conform to and are administered in conformance with the policies concerning healthcare providers that are determined by Trigon Healthcare, Inc.

84. Blue Cross and Blue Shield Association knowingly permits Trigon use the Blue Cross/Blue Shield marks to sell healthcare plans and services that wrongfully discriminate against doctors of chiropractic. Onerous Conditions Required of Healthcare Providers by Trigon

85. Trigon Services, Inc., on behalf of Trigon Healthcare, Inc.'s subsidiaries Trigon Insurance, Inc., Trigon Administrators, Inc., and Trigon Health and Life Insurance Company, and Trigon Healthcare, Inc.'s formerly wholly owned subsidiary Mid-South Insurance Company, entered into agreements with healthcare providers pursuant to which healthcare providers provide and/or have provided healthcare services to persons covered by healthcare plans sold and/or administered by those subsidiaries.

86. The agreements with Trigon Services, Inc. impose conditions and obligations on healthcare providers that govern and/or govern services provided to persons covered by healthcare plans administered by those subsidiaries and that former subsidiary of Trigon Healthcare, Inc.

87. As a condition for being a provider of healthcare services to persons covered by healthcare plans sold and/or administered by those Trigon subsidiaries, a provider must agree that Trigon will determine the amount that the provider must accept as payment in full for services provided to those persons.

88. Trigon requires doctors of chiropractic to accept an "Ancillary Professional Provider Agreement" as a condition for becoming a "network" or "participating" Trigon provider. The Ancillary Professional Provider Agreement includes the requirement that the doctor of chiropractic accept Trigon's determination of the amount that is full payment for services provided by the doctor of chiropractic to persons covered by Trigon healthcare plans.

89. Nearly 95% of the physicians in the Commonwealth of Virginia have agreed to Trigon's terms for providing healthcare services to persons covered by healthcare plans administered by Trigon.

Trigon's Unreasonable Restraint on Access to Doctors of Chiropractic

90. Trigon can discourage healthcare providers from offering services to persons covered by healthcare plans administered by Trigon by requiring that providers agree to onerous terms as a condition for being a Trigon provider.

91. Trigon can direct persons covered by healthcare plans administered by Trigon away from disfavored healthcare providers and to favored healthcare providers by setting the terms and the extent of coverage of services provided by healthcare providers.

92. Trigon has sought to discourage doctors of chiropractic from offering chiropractic treatment to persons covered by healthcare plans administered by Trigon by imposing conditions for covered chiropractic treatment that are incompatible with accepted chiropractic practice and paying unconscionably inadequate reimbursements for services.

93. Trigon directs persons covered by healthcare plans that it administers to medical doctors by covering services of medical doctors to a greater extent than those of chiropractors. Trigon has unreasonably limited the coverage of chiropractic treatment under healthcare plans that it administers and has characterized chiropractic as an alternative or nontraditional treatment. By denigrating chiropractic treatment and by unreasonably limiting the coverage of chiropractic treatment under healthcare plans that it administers, Trigon has wrongfully interfered with the choice of persons covered by healthcare plans that Trigon administers to elect to be treated by a doctor of chiropractic.

Trigon's Unreasonable Conditions on and Unconscionable Reimbursement for Chiropractic Discourage Chiropractors from Providing Services to Persons Covered by Healthcare Plans Administered by Trigon

Refusal to Cover Services of Chiropractic Assistants

94. For well more than fifty years, doctors of chiropractic have relied on trained chiropractic assistants to aid doctors of chiropractic in treating patients. The responsibilities of chiropractic assistants are limited to providing supplemental care that does not rise to the level of the practice of chiropractic. Service of chiropractic assistants is a long established and traditional part of chiropractic treatments.

95. Though chiropractic assistants have assisted doctors of chiropractic in the Virginia for many decades, the Commonwealth of Virginia has not and does not require that a person assisting a doctor of chiropractic as a chiropractic assistant obtain professional licensure. The Commonwealth of Virginia does not now and never has issued such a license.

96. Trigon refuses to reimburse the costs of services of chiropractic assistants because chiropractic assistants do not hold, because none are available, a professional license from the Commonwealth of Virginia. Doctors of chiropractic must either provide the services normally provided by chiropractic assistants themselves and seek reimbursement where available, or provide the services of a chiropractic assistant to a person covered by a healthcare plan administered by Trigon and receive no reimbursement for those services.

97. Trigon's refusal of reimbursement for the services of chiropractic assistants because the Commonwealth of Virginia has not recognized a need for licensure of chiropractic assistants unfairly and unconscionably discriminates against doctors of chiropractic.

Unconscionably Low (Including Nothing) Reimbursement for Covered Chiropractic Treatment

98. The Trigon Ancillary Professional Provider Agreement requires doctors of chiropractic to accept amounts determined by Trigon as full payment for their services. Trigon has acted unconscionably in exploiting this requirement to impose predatory and punitively low reimbursements for the services of doctors of chiropractic, including no reimbursement at all.

99. The American Medical Association, an organization of medical doctors, has developed and published Physician's Current Professional Terminology ("CPT") codes that have been widely recognized and adopted as a basis for identifying healthcare services. The Commonwealth of Virginia has recognized the wide acceptance of those codes in requesting reimbursement from insurance companies for a healthcare provider's services. Va. Code Ann. §38.2-322(E). Trigon requires that providers submit requests for payment using CPT codes to identify the services for which payment is requested.

100. In 1997, the AMA adopted three CPT codes associated with treatments of different numbers of regions of the spine by doctors of chiropractic. Prior to 1997, only one CPT code was associated with spinal manipulation by a doctor of chiropractic.

101. The three CPT codes assigned in 1997 to chiropractic manipulation treatments of the spine ("CMT codes") each correspond to manipulation of a number of regions of the spine, 1-2 for the lowest code, 3-4 for the next higher code, and 5 regions for the highest code.

102. A widely recognized standard for determining the value of the treatment represented by a CPT code is Medicare's Resource Based Relative Value System ("RBRVS"). An RBRVS value is assigned to each CPT code. The RBRVS value associated with a CPT code is based on the effort, training, and instruments that are required to provide the treatment represented by the CPT code.

103. Trigon represents that the amounts that it reimburses providers for treatments are set "using Medicare's Resource Based Relative Value System methodologies".

104. The CMT code that represents treatment of a larger number of regions of the spine by a doctor of chiropractic has a larger RBRVS value than a CMT code that represents treatment of fewer regions. The RBRVS value for the CMT code for treatment of 5 regions is more than 50% greater than the RBRVS value for the CMT code for treatment of 1 - 2 regions.

105. The CMT codes and associated RBRVS values adopted in 1997 are consistent with the CPT codes representing manipulations performed by a doctor of osteopathy ("OMT codes") and corresponding RBRVS values that have existed since prior to 1997. Like the RBRVS values associated with CMT codes adopted in 1997, the RBRVS values associated with OMT codes have been larger for OMT codes that represented manipulations of a greater number of regions and have been lower for OMT codes that represented manipulations of a smaller number of regions since prior to 1997.

106. Prior to 1997, Trigon reimbursed doctors of osteopathy consistently with the RBRVS values associated with OMT codes. Trigon reimbursed a greater amount for an OMT code having a larger RBRVS value than for an OMT code having a smaller RBRVS value.

107. After the CMT codes for chiropractic treatment were adopted in 1997 and replaced the single code that had previously represented spinal manipulation by a doctor of chiropractic, Trigon adopted a policy of ignoring the differences in RBRVS values between CPT codes for manual manipulation treatment by all providers who provide manual manipulation treatments of the spine. Trigon now reimburses only the amount associated with codes for the smallest number of regions regardless of the number of regions actually treated.

108. Under Trigon's policy, a doctor of chiropractic who determines that a patient covered by a Trigon healthcare plan requires treatment of more than two regions of the spine, the number represented by the CMT code having the lowest RBRVS value, and who treats all required regions, will be reimbursed by Trigon as though only two regions had been treated. Trigon's policy requires that a doctor of chiropractic who treats 3, 4, or 5 regions of a Trigon patient's spine will have treated 1, 2, or 3 regions of the spine for no reimbursement - i.e. free.

109. Trigon's policy most severely affects doctors of chiropractic because it limits reimbursement for the most important and most sought treatment provided by doctors of chiropractic. Though this policy applies to all practitioners who provide manual manipulation forms of treatment, including doctors of chiropractic, doctors of osteopathy, and physical therapists, other healthcare providers are not affected by this policy to the extent that doctors of chiropractic are affected because manual manipulation is only one treatment provided by those other practitioners and is of lesser importance to the entirety of the their practice.

110. Even though this limitation on reimbursement affects doctors of osteopathy to a much lesser extent than doctors of chiropractic,

doctors of osteopathy complained to Trigon about this 1997 change to a policy of refusing additional reimbursement for OMT codes representing additional treatment beyond the minimum number of regions. Trigon responded that its refusal to reimburse for treatment by manual manipulation of more than the minimum number of regions was intended to limit payments to chiropractors. Trigon suggested that other CPT codes for which doctors of osteopathy were authorized to bill and that are not authorized for chiropractors could be invoked so that osteopaths could avoid being economically disadvantaged by Trigon's anti-chiropractic policies.

#### Progressive Cuts in Reimbursement for Chiropractic Treatment

111. In addition to imposing a low limit for reimbursement for treatments primarily provided by doctors of chiropractic and refusing to reimburse doctors of chiropractic for treatment of a number of regions of the spine that is greater than the number covered by the CMT code having the lowest RBRVS value, Trigon has progressively diminished the amount that is reimbursed for services by doctors of chiropractic.

112. Trigon has, over a period of years, progressively reduced payments for services provided by chiropractors by these policies and now pays for the services of doctors of chiropractic at a rate that is approximately 40% less than the rate at which services of medical doctors are compensated.

113. By reducing compensation paid to doctors of chiropractic, even to the point of reimbursing nothing at all for treatment of more regions of the spine than are covered by the CMT code having the lowest RBRVS value, Trigon has and is excluding doctors of chiropractic from providing services under a Trigon provider agreement. By making its conditions difficult or economically impossible for doctors of chiropractic to accept, Trigon is forcing doctors of chiropractic to reject Trigon's agreements, and thereby become a provider whose services Trigon tells its covered persons will cost them the most. Doctors of chiropractic are thus left with a Hobson's choice -- dictated by an unconscionable illegal tactic of Trigon and its medical physician co-conspirators -- between exclusion from Trigon networks or accepting unconscionably and unlawfully inadequate compensation for treating persons covered by Trigon healthcare plans.

#### Trigon Discourages Persons Covered by Trigon Healthcare Plans from Seeking Chiropractic Treatment

114. Healthcare plans administered by Trigon reimburse different amounts for services provided by different healthcare providers. This policy allows Trigon to direct and/or encourage persons covered by those healthcare plans to seek treatment from healthcare providers favored by Trigon and to discourage those persons from seeking treatment by healthcare providers that are disfavored by Trigon.

#### Trigon's Networks of Providers

115. Trigon encourages persons covered by healthcare plans administered by Trigon to seek treatment from providers who have agreed that Trigon may unilaterally determine the amount the provider will receive for services provided to those persons.

116. Trigon covers the largest portion of charges for a provider's services when services are provided by members of a "network" of healthcare providers. Membership in the network is controlled by Trigon. Trigon covers a significantly lesser portion of the charges for services provided by a provider who is not a member of the network but who has agreed that Trigon may determine the provider's fees for services. Trigon thereby penalizes covered persons who seek treatment

from a provider who Trigon has not included in the network for the covered person's healthcare plan.

117. Trigon tells persons covered by Trigon's healthcare plans that they will be additionally penalized if they seek treatment from a provider who has not agreed that Trigon may set the amount that a provider must accept as full compensation for the provider's services. Trigon reimburses the same amount for treatment by a provider who has not agreed that Trigon may determine the provider's fees that it reimburses for treatment by a provider who has agreed that Trigon will determine the provider's fees but who is not a member of the covered person's provider network. However, Trigon informs covered persons that the covered person will be obligated to pay more to providers who have not agreed that Trigon may determine their fees than they would be obligated to pay a provider who has agreed that Trigon may determine provider's services.

Trigon's Cap on Reimbursement for Chiropractic Treatment

118. Trigon has imposed limitations and conditions on reimbursement for services rendered by doctors of chiropractic that discourage those covered by healthcare plans administered by Trigon from seeking chiropractic treatment.

119. Trigon has imposed a maximum annual payment of \$500.00 per year for "spinal manipulations and other manual medical interventions." This cap applies to charges for chiropractic treatment and limits the amount of chiropractic care that a patient can receive before the patient is solely responsible for paying for chiropractic treatment.

120. No other healthcare providers limit their practice to noninvasive manual adjustment of the neuromusculoskeletal system to the extent that doctors of chiropractic focus treatment on manual adjustment.

121. This \$500.00 limitation on coverage for a treatment primarily rendered by doctors of chiropractic clearly directs patients suffering low back pain and other conditions which are regularly and successfully treated by doctors of chiropractic to seek treatments that are not subject to severe coverage limitations, principally treatments offered by medical doctors. This cap on coverage of chiropractic treatment penalizes patients who seek chiropractic treatment rather than treatment offered by a medical doctor. One court has held that such limitations are clearly discriminatory and directed to excluding doctors of chiropractic. *Nosser v. Health Fund Trust Fund Bd.*, 666 So.2d 1272 (La.Ct. App. 1996).

Trigon Offers Additional Coverage of Chiropractic as

a Treatment that is Excluded from the Scope of Primary Care

122. Trigon offers chiropractic treatment to those covered by Trigon healthcare plans characterizing doctors of chiropractic as "alternative medicine practitioners." Trigon offers this access to chiropractic treatment "[a]s a service, not a covered benefit." This program that Trigon offers requires that persons seeking chiropractic treatment to pay 75% of the charge for treatment.

123. The effect of this program and Trigon's characterization of chiropractic services offered by this program is to portray chiropractic treatment as not "traditional medicine," and a costly additional treatment that is outside the scope of healthcare services that are covered by Trigon healthcare plans.

Combination and Conspiracy in Restraint of Trade

124. By limiting the coverage of chiropractic treatment to a cost that is less than the covered cost of treatments by a medical doctor, and seeking to exclude chiropractors from its networks of providers by

refusing to pay for recognized and accepted chiropractic services and by paying unreasonably and unconscionably inadequate reimbursement for those chiropractic treatments that are covered, Trigon has unreasonably restricted access to doctors of chiropractic by those covered by Trigon healthcare plans.

125. Trigon's acts and policies discriminating against doctors of chiropractic, particularly in view of the number of persons covered by Trigon healthcare plans and the number of doctors of chiropractic wrongfully injured by Trigon's discriminatory policies and acts, substantially and adversely affect interstate commerce.

126. All acts of Trigon restraining access to doctors of chiropractic by persons covered by Trigon healthcare plans are or were approved by, encouraged by, and/or suggested by competing medical doctors who advise Trigon, including those medical doctors holding positions on the Provider Policy Committee of the Board of Directors of Trigon Healthcare, Inc.

127. These medical doctors have conspired with Trigon to restrict access to doctors of chiropractic by persons covered by Trigon healthcare plans to further the interests of medical doctors with whom doctors of chiropractic compete in treating neuromusculoskeletal abnormalities of the spine.

128. All acts of Trigon restraining access to doctors of chiropractic by persons covered by Trigon healthcare plans were approved by and aided by Blue Cross and Blue Shield Association including by allowing economically powerful Blue Cross/Blue Shield marks to be used to increase the enrollment in Trigon healthcare plans that discriminate against and restrict access to doctors of chiropractic.

129. The anti-chiropractic policies that Trigon has adopted and enforced have harmed competition by restricting the access of a large percentage of the population of Virginia to the entire licensed healthcare profession of chiropractic.

130. Trigon's anti-chiropractic policies have caused persons covered by Trigon healthcare plans who desired and/or needed chiropractic care, to either fail to visit a chiropractor or to fail to visit a chiropractor with the regularity required for adequate care. Trigon's anti-chiropractic policies have harmed those persons.

131. Trigon's anti-chiropractic policies have restricted access to doctors of chiropractic of persons who would have sought treatment from a doctor of chiropractic but for Trigon's policies. Trigon's anti-chiropractic policies have required chiropractors to accept unconscionably inadequate reimbursement for treating Trigon covered patients including no compensation at all. Therefore, chiropractors have suffered harm from lost opportunities and services rendered without fair and adequate compensation as a result of Trigon's anti-chiropractic policies.

132. The anti-chiropractic policies adopted and enforced by Trigon and its competitive medical physicians have created an illegal boycott of chiropractic and are a concerted refusal to deal with the chiropractic profession.

133. Trigon, medical doctors, and Blue Cross and Blue Shield Association have engaged in an unlawful combination and conspiracy in restraint of trade in violation of 15 U.S.C. § 1.  
Count II - Attempt to Monopolize

134. Plaintiffs repeat the allegations of paragraphs 1 - 65, 67 - 133.

135. The acts of Trigon, Blue Cross and Blue Shield Association, and medical doctors are attempts to monopolize in furtherance of a conspiracy to monopolize the submarket for treatment of

neuromusculoskeletal conditions of the back of the market for healthcare services in violation of 15 U.S.C. § 2.  
Count III - Violation of the Racketeer Influenced and Corrupt Organizations Act

136. Plaintiffs repeat the allegations of paragraphs 1 - 65, 67 - 133.

137. Plaintiffs are "persons" within the meaning of 18 U.S.C. §§1961(3) and 1964(c).

138. Trigon Healthcare, Inc. and its subsidiaries including Trigon Insurance, Inc., Trigon Administrators, Inc., Mid-South Insurance Company, and Trigon Health and Life Insurance Company are each and are and have been collectively a "person" within the meaning of 18 U.S.C. §§1961(3) and 1962(a).

139. Trigon Healthcare, Inc. and its subsidiaries including Trigon Insurance, Inc., Trigon Administrators, Inc., Mid-South Insurance Company, and Trigon Health and Life Insurance Company are each and are and have been collectively an "enterprise" within the meaning of 18 U.S.C. §§1961(4) and 1962(a) that are and have been engaged in, or the activities of which affect and have affected, interstate commerce within the meaning of 18 U.S.C. §1962(a).

140. Trigon Healthcare, Inc. and its subsidiaries have engaged in a pattern of racketeering activity within the meaning of 18 U.S.C. §§1961(1), 1961(5), and 1962(a).

Trigon's Extortionate Scheme - Violations of the Hobbs Act and the Virginia Extortion Statute

141. As alleged at paragraphs 70 through 72 above, Trigon healthcare plans cover a significant portion, about a third, of the population of Virginia, more than 40 % of the persons in Virginia who are covered by private health insurance. Moreover, more than 90% of the competitive medical physicians in Virginia benefit from Trigon's illegal actions.

142. Persons covered by Trigon healthcare plans first and primarily seek healthcare services that are covered to the greatest amount by their Trigon healthcare plan.

143. Trigon enjoys significant power in the market for healthcare services in Virginia, and particularly in the submarket for treatment of neuromusculoskeletal conditions of the back, based on the significant portion of the population of Virginia who look for healthcare treatment that is covered by Trigon healthcare plans and based on Trigon's right to determine what services are covered by Trigon healthcare plans and the extent to which providers' services are covered.

144. As averred in paragraphs 85 through 89 above, for a physician's services to be covered to the greatest extent by Trigon healthcare plans, Trigon requires that a physician agree that Trigon will unilaterally determine the amount that is payment in full for the physician's services.

145. As set forth by paragraphs 98 through 113 above, Trigon has abused its rights under contracts with doctors of chiropractic by paying, since at least as early as 1998, unconscionably low reimbursements to doctors of chiropractic, including nothing at all, for services that doctors of chiropractic provide to patients covered by Trigon healthcare plans.

146. Since at least 1998, doctors of chiropractic have requested reimbursement from Trigon for treatment that was reported by CMT codes that represent treatment of more regions of the spine than are covered by the CMT code for the minimum number of regions.

147. Though Trigon has repeatedly received reimbursement requests reporting treatment of more regions of the spine than the number

covered by the minimum CMT code, Trigon has reimbursed only for treatment of the regions covered by the minimum CMT code and has refused to pay any reimbursement for treatment of the regions beyond those covered by the minimum CMT code.

148. At least a significant portion of the nearly 95% of the physicians in Virginia, including doctors of chiropractic, who have agreed that Trigon will unilaterally determine the amount that the physician must accept as payment in full for the physician's services have done so based on fear of severe economic loss that they would incur if they were excluded by Trigon from the scope of the greatest coverage of Trigon healthcare plans. Exclusion from the greatest scope of coverage would mean that the significant coercive pressure that Trigon exerts on the people covered by Trigon administered healthcare plans would direct those people away from the excluded physician and to physicians who have agreed to Trigon's terms and who are part of the covered person's Trigon network of providers.

149. At least a significant portion of the nearly 95% of the physicians in Virginia, including doctors of chiropractic, who have agreed that Trigon may unilaterally determine the amount that they must accept as full payment for their services have done so based on fear that their reputation could be perceived to be diminished as a consequence of not providing services that are within the greatest coverage of healthcare plans sold under the Blue Cross/Blue Shield marks.

150. Trigon knows that physicians who have agreed that Trigon may unilaterally determine the amount that they must accept as full payment for their services have done so based on fear of economic loss should they refuse to agree to Trigon's terms and be excluded from networks of providers for Trigon healthcare plans.

151. Trigon represents that specified costs of healthcare are covered Trigon healthcare plans. To those who are covered by a Trigon healthcare plan, the value of that plan is based on the services that are available and the extent to which those services are covered by the plan. Doctors of chiropractic directly benefit Trigon by treating persons covered by Trigon healthcare plans and provide that treatment as a service that is covered by the Trigon healthcare plan.

152. Doctors of chiropractic have treated persons covered by Trigon healthcare plans knowing that Trigon would refuse any reimbursement for some services. Doctors of chiropractic have provided those services based on a reasonable fear of economic loss that would result from exclusion as a provider to Trigon's programs should they refuse to treat persons covered by Trigon administered healthcare plans for free.

153. Trigon knows that doctors of chiropractic have treated and continue to treat patients covered by Trigon healthcare plans knowing that Trigon will refuse to provide any reimbursement for some services because doctors of chiropractic fear the economic loss that would result from exclusion as a provider to Trigon's programs. Trigon has exploited and continues to exploit that fear to obtain treatments without any cost to Trigon for persons for whom Trigon is obligated to cover healthcare services.

154. Trigon has no legal right to refuse to pay reasonable compensation to doctors of chiropractic for services that are covered by Trigon healthcare plans and that are provided to those who are covered by Trigon healthcare plans by doctors of chiropractic.

155. Trigon has coerced doctors of chiropractic with fear of economic loss into providing services, repeatedly since at least 1998, without

reasonable compensation in violation of both federal and Virginia law, 18 U.S.C. §1951, and Virginia, Va. Ann. Code §18.2-59.

156. Plaintiffs ACA's and VCA's member doctors of chiropractic have been deprived of property and injured in their business of the practice of chiropractic by succumbing to Trigon's coercion to provide healthcare services for less than reasonable compensation, including none at all.

157. Trigon has used funds that it has wrongfully refused to pay to doctors of chiropractic as compensation for services provided to persons covered by Trigon healthcare plans to pay for services of medical doctors who compete with doctors of chiropractic in the market for healthcare services and particularly in the submarket for treatment of neuromusculoskeletal conditions of the back.

158. Trigon has used funds that it has wrongfully refused to pay to doctors of chiropractic as compensation for services provided to persons covered by Trigon healthcare plans to lower the costs of the healthcare plans that it sells and thereby enroll greater numbers of persons within healthcare plans that do not pay doctors of chiropractic reasonable compensation for healthcare services.

159. Plaintiffs ACA's and VCA's member doctors of chiropractic and plaintiff doctors of chiropractic have been deprived of property and injured in their business of the practice of chiropractic by Trigon's use of funds that it has wrongfully refused to pay to doctors of chiropractic as compensation for services provided to persons covered by Trigon healthcare plans to operate and expand its enterprise thereby increasing its ability to apply coercive pressure to patients not to seek chiropractic treatment and its ability to coerce doctors of chiropractic to accept unfair and unreasonable compensation for treating persons who are covered by Trigon healthcare plans.

Trigon's Scheme to Defraud - Mail Fraud, Wire Fraud, and Securities Fraud

160. Trigon represents that it reimburses providers of healthcare services for covered services based on RBRVS methodologies or guided by RBRVS values.

161. Trigon has made these representations in documents deposited for delivery by the United States Postal Service and in documents transmitted by wire in interstate commerce, including documents filed with the Securities and Exchange Commission.

162. Trigon intends these representations to be relied on by persons who purchase healthcare plans sold by Trigon or who engage Trigon to administer a healthcare plan according to Trigon's policies as an assurance that providers of healthcare services will be fairly compensated for providing treatment to persons who are covered by the healthcare plan.

163. Trigon intends these representations to be relied on by persons covered by Trigon healthcare plans as an assurance that providers of healthcare services under Trigon healthcare plans will be fairly compensated for providing covered treatments to those persons.

164. Trigon intends these representations to be relied on by providers of healthcare services to Trigon healthcare plans as an assurance that the providers will be fairly compensated for treatment provided to persons who are covered by Trigon healthcare plans.

165. Trigon intends these representations to be relied on by members of the public who invest in securities issued by Trigon Healthcare, Inc. that are sold to the public as an assurance that Trigon's business is based on providing healthcare services for which providers are fairly compensated.

166. Trigon does not compensate doctors of chiropractic for chiropractic manipulation treatments based on RBRVS methodologies or guided by RBRVS values assigned to CMT codes. Trigon completely ignores the values associated with treatment of a greater number of regions of the spine than are associated with the minimum treatment CMT code. Trigon, in effect, converts to zero the values added to the RBRVS value for the minimum treatment CMT code to arrive at the higher RBRVS values of the CMT codes representing treatment of more regions of the spine.

167. Ignoring incremental RBRVS values representing the difference between treatment of the minimum number of regions of the spine and treating a greater number of regions cannot fairly or reasonably be characterized as being guided by RBRVS values or based on RBRVS methodologies. It is completely ignoring the values and methodologies.

168. Trigon's representations that it pays providers of healthcare services covered by Trigon healthcare plans based on RBRVS methodologies or guided by RBRVS values are false.

169. Trigon knows that its representations that it pays providers of healthcare services covered by Trigon healthcare plans based on RBRVS methodologies or guided by RBRVS values are false.

170. Persons covered by Trigon healthcare plans have relied on these false statements as an assurance that providers of healthcare services under Trigon healthcare plans will be fairly compensated for providing those persons treatment that is covered by the Trigon healthcare plan.

171. Persons who have purchased healthcare plans sold by Trigon or who have engaged Trigon to administer a healthcare plan according to Trigon's policies have purchased healthcare plans or engaged Trigon to administer healthcare plans relying on those false statements as an assurance that providers of healthcare services will be fairly compensated for treating persons who are covered by the Trigon healthcare plan.

172. Providers of healthcare services to Trigon healthcare plans have relied on these false statements when entering into agreements with Trigon as an assurance that they will be fairly compensated for treatment provided to persons who are covered by Trigon healthcare plans.

173. Members of the public have invested in securities issued by Trigon Healthcare, Inc. relying on those false statements as an assurance that Trigon's business is based on fairly compensating healthcare providers for treating persons who are covered by Trigon healthcare plans.

174. Trigon knows of and has exploited that reliance on its false statements in selling healthcare plans and administration services, in encouraging physicians to agree to provide healthcare services to persons covered by Trigon's healthcare plans, in encouraging persons to seek to be covered by Trigon's healthcare plans, and in selling securities to the public.

175. Trigon has engaged in repeated and numerous acts constituting mail and wire fraud in violation of 18 U.S.C. §§ 1341 and 1343.

176. Trigon has engaged in securities fraud in violation of 15 U.S.C. §77q(a).

177. Trigon has used funds that it has received from purchasers of healthcare plans and from the investing public who relied on Trigon's false statements as an assurance that providers of healthcare services will be fairly compensated for treating persons who are covered by Trigon healthcare plans to pay for services of medical doctors who compete with doctors of chiropractic in the market for healthcare

services, and particularly in the submarket for treatment of neuromusculoskeletal conditions of the back.

178. Trigon has used funds that it has received from purchasers of healthcare plans and from the investing public who relied on Trigon's false statements as an assurance that providers of healthcare services will be fairly compensated for treating persons who are covered by Trigon healthcare plans to lower the costs of the healthcare plans that it sells and thereby enroll greater numbers of persons within healthcare plans that do not pay doctors of chiropractic reasonable compensation for healthcare services.

179. Plaintiffs ACA, VCA, and member doctors of chiropractic have been injured by the increase in the number of persons covered by Trigon healthcare plans as a result of Trigon's false statements in two ways: 1) Trigon can now coerce more people to seek medical rather than chiropractic treatment; and 2) Trigon can apply even greater pressure to doctors of chiropractic to accept unfair and unreasonable compensation for treating persons who are covered by Trigon healthcare plans.

180. Trigon has used funds that it has received from purchasers of healthcare plans, from purchasers of administration services, and from the investing public, all of whom relied on Trigon's false statements as an assurance that providers of healthcare services will be fairly compensated for treatment provided to persons who are covered by Trigon healthcare plans, to operate and expand its enterprise thereby increasing its ability to apply coercive pressure to more persons not to seek chiropractic treatment and increasing the coercive pressure that Trigon applies to doctors of chiropractic to accept unfair and unreasonable compensation for treating persons who are covered by Trigon healthcare plans.

181. Plaintiffs ACA's and VCA's member doctors of chiropractic and plaintiff doctors of chiropractic have been deprived of property and injured in their business of the practice of chiropractic by Trigon's use of funds that it has received from purchasers of healthcare plans and administration services and from the investing public, all of whom relied on Trigon's false statements as an assurance that providers of healthcare services will be fairly compensated for treatment provided to persons who are covered by Trigon healthcare plans.

182. Trigon has wrongfully deprived plaintiffs ACA's and VCA's member doctors of chiropractic and the plaintiff doctors of chiropractic of property and injured them in their business of the practice of chiropractic by depriving them of access to patients and of reasonable compensation for chiropractic treatment by a pattern of wrongful conduct including numerous and repeated violations of 18 U.S.C. §§1341, 1343.

183. Trigon has wrongfully deprived plaintiffs ACA's and VCA's member doctors of chiropractic and the plaintiff doctors of chiropractic of property, within the scope of 18 U.S.C. §1951(b)(2).

184. Trigon's repeated violations of 18 U.S.C. §§ 1341, 1343, and 1951 is a pattern of violations in support an unlawful scheme to deny doctors of chiropractic access to patients by increasing the number of persons who are covered by healthcare plans sold and/or administered by Trigon, coercing those persons not to seek chiropractic care, and requiring doctors of chiropractic to accept unreasonable and unfair conditions to be included within Trigon's healthcare plans.

185. Trigon has continued since at least 1997 and unless enjoined by this Court will continue this pattern of unlawful acts, including

continuing violations of 18 U.S.C. §§ 1341, 1343, and 1951, in support of its unlawful scheme.

186. Plaintiffs ACA's and VCA's members plaintiff doctors of chiropractic have been deprived of property and injured in their business of the practice of chiropractic by Trigon's violations of 18 U.S.C. §1341, 1343, 1951, and 15 U.S.C. §77q(a).

187. Plaintiffs ACA, VCA, their members doctors of chiropractic, and plaintiff doctors of chiropractic have been injured in their businesses by Trigon's use of the proceeds received as a result of its pattern of violations of 18 U.S.C. §1341, 1343, 1951, and 15 U.S.C. §77q(a) within the meaning of 18 U.S.C. §1964(c).

#### Count IV - Tortious Interference with Business Expectancy

188. Plaintiffs repeat the allegations of paragraphs 1 - 65, 67 - 121, 135 - 184.

189. Doctors of chiropractic have a reasonable expectation that some people who suffer from conditions that may be treated by chiropractic will seek treatment by a licensed doctor of chiropractic.

190. Doctors of chiropractic have a reasonable expectation that they will receive reasonable compensation for providing chiropractic treatments to patients who seek chiropractic care.

191. Doctors of chiropractic and patients of doctors of chiropractic have a reasonable expectation that the doctor/patient relationships will not be interfered with by third parties.

192. Trigon knows that some people who are covered by Trigon healthcare plans who suffer from conditions that may be treated by chiropractors would seek treatment by a doctor of chiropractic.

193. Trigon knows that doctors of chiropractic have a reasonable expectation that some people who are covered by Trigon healthcare plans and who suffer from conditions that may be treated by chiropractors, will seek treatment by a doctor of chiropractic.

194. Trigon also knows that doctors of chiropractic have formed doctor/patient relationships with certain people for whom chiropractic treatments have been effective in treating conditions and that those doctors of chiropractic have a reasonable expectation that the relationship will not be interfered with by third parties.

195. Trigon knows that doctors of chiropractic have a reasonable expectation that some people who are covered by Trigon healthcare plans and who have established a doctor/patient relationship with a doctor of chiropractic will continue to seek treatment by the doctor of chiropractic.

196. Trigon knows that doctors of chiropractic have a reasonable expectation that they will receive reasonable compensation for providing chiropractic treatments in the past, present, and future.

197. Trigon has instituted the policies, including those described by paragraphs 114 - 123 above, that discourage persons covered by Trigon healthcare plans from seeking or continuing treatment by a doctor of chiropractic.

198. Trigon has also damaged the relationships of doctors of chiropractic and their patients by questioning without adequate basis the medical necessity of chiropractic treatment and informing patients that the medical necessity of chiropractic treatment was being questioned.

199. Trigon's chiropractic reimbursement policies have discouraged and/or prevented persons covered by Trigon healthcare plans who would benefit from chiropractic treatment from seeking that treatment, from obtaining the number of treatments that would be most appropriate for

the patient's condition, from seeking treatment as soon as would be most appropriate for the patient's condition, and/or from seeking any additional chiropractic treatment because the five hundred dollar cap instituted by Trigon for chiropractic services had been reached.

200. Trigon's policies have interfered with the normal business and contractual relations and expectations of ACA's and VCA's member doctors of chiropractic and plaintiff doctors of chiropractic in the business and practice of providing chiropractic treatment to persons covered by Trigon healthcare plans.

201. Trigon has interfered with the reasonable contractual and business expectations of doctors of chiropractic pursuant to a conspiracy, as alleged at paragraphs 73 - 80 and 124 - 133, with medical doctors who are in competition with doctors of chiropractic.

202. Trigon, as evidenced by its acts as alleged herein, intends to marginalize, diminish, and ultimately effectively eliminate doctors of chiropractic as healthcare providers.

203. Trigon's interference with the business expectations of doctors of chiropractic in their businesses of the practice of chiropractic has been malicious and wanton, and has caused and will cause financial and other damage to plaintiffs and other chiropractors and their patients.  
Count V - Violation of Va. Ann. Code §§18.2-499

204. Plaintiffs repeat the allegations of paragraphs 1 - 65, 67 - 133, 135, 137 - 187, 189 - 203.

205. Trigon has combined with medical doctors and Blue Cross and Blue Shield Association, as set forth by paragraphs 73 - 84 above, to injure doctors of chiropractic in their businesses within Virginia.

206. Trigon and those with whom it has combined have acted willfully and maliciously to injure doctors of chiropractic in their businesses as set forth by the facts alleged above, including preventing persons from lawfully seeking chiropractic care.

207. The actions of Trigon and those who have acted in combination with Trigon are intended and designed to harm chiropractors in their trade, business, reputation, profession.

208. Trigon and Blue Cross and Blue Shield Association are liable to plaintiffs pursuant to Va. Ann. Code §18.2-500.

Count VI - Breach of Contract with Doctors of Chiropractic

209. Plaintiffs repeat the allegations of paragraphs 1 - 65, 85 - 88, 98 - 113.

210. Trigon has entered into contracts with doctors of chiropractic, including plaintiffs, as set out by paragraphs 85 - 88 providing that doctors of chiropractic will provide treatments to persons covered by Trigon healthcare plans.

211. Those contracts are governed by and construed and enforced in accordance with the laws of the Commonwealth of Virginia.

212. Those contracts obligate Trigon Insurance Co., Trigon Administrators, Inc., Mid-South Insurance Company, and Trigon Health and Life Insurance Company, subsidiaries of Trigon Healthcare, Inc., to pay or administer payment to doctors of chiropractic for services provided to persons covered by healthcare plans that were sold and/or administered by Trigon Insurance Co. and the other named subsidiaries of Trigon Healthcare, Inc.

213. Those contracts obligate the doctors of chiropractic to accept as payment in full the amount determined by Trigon Insurance Co. and other named subsidiaries of Trigon Healthcare, Inc.

214. There is an obligation in contract implied by the law of the Commonwealth of Virginia to pay reasonable compensation for services that are requested and accepted.

215. By entering into a contract to provide chiropractic services to persons covered by healthcare plans that were sold and/or administered by them and by entering into agreements with doctors of chiropractic to provide covered services to persons covered by healthcare plans sold and/or administered by them, Trigon Insurance Co., Trigon Administrators, Inc., Mid-South Insurance Company, and Trigon Health and Life Insurance Company requested that doctors of chiropractic provide services to persons covered by their healthcare plans as requested by those persons.

216. As set out by paragraphs 98 - 113, Trigon Insurance Co. and the other named subsidiaries of Trigon Healthcare, Inc. have refused to pay any compensation to doctors of chiropractic for treatment of a number of regions of a patient's spine in excess of those covered by the CMT code for the smallest number of regions.

217. Trigon has breached the contract implied in law to pay reasonable compensation for services of doctors of chiropractic including contracts with plaintiffs ACA's and VCA's member doctors of chiropractic and plaintiff doctors of chiropractic.  
Count VII -Common Law Conspiracy to Injure the Practices of Doctors of Chiropractic

218. Plaintiffs repeat the allegations of paragraphs 1 - 65, 67 - 132, 135, 137 - 187, 189 - 203, 205 - 207, and 210 - 217.

219. Trigon, medical doctors, and Blue Cross and Blue Shield Association have conspired to injure the practices of doctors of chiropractic by restricting access to doctors of chiropractic of a significant portion of the population of Virginia and by wrongfully discouraging persons from seeking chiropractic treatment.

220. Trigon has committed wrongful acts in furtherance of the conspiracy to injure the practices of doctors of chiropractic that have deprived doctors of chiropractic of opportunities to treat patients whose condition was appropriate for chiropractic care and have deprived doctors of chiropractic of reasonable compensation for chiropractic treatment provided to persons who are covered by healthcare plans that were sold and/or administered by Trigon.

221. Plaintiffs ACA's and VCA's members doctors of chiropractic and plaintiff doctors of chiropractic have been damaged by the acts of Trigon in furtherance of the conspiracy to injure the practices of doctors of chiropractic.

Count VIII -Violation of the Insurance Equality Laws of the Commonwealth of Virginia

222. All of the allegations above are herein realleged and incorporated herein.

223. The acts complained of and in particular capping chiropractic care benefits and paying doctors of chiropractic only 60% of the fee schedule paid to other providers for the same or similar services violates Va. Ann. Code §§38.2-2203, 38.2-3408, 38.2-4221, and 38.2-4312(E).

224. Plaintiffs have been damaged and injured as a result of these violations by defendants and pray for damages and relief as set forth below.

Trial by Jury Demanded

225. Plaintiffs demand a trial by jury of all issues that may be so tried.

WHEREFORE, plaintiffs pray this Court for the following relief:

- A. An Order restraining and enjoining defendants, preliminarily and permanently, from engaging in the unfair and unlawful acts and practices alleged in this complaint;
- B. That defendants be ordered, jointly and severally, to pay three times actual damages pursuant to 15 U.S.C. § 15, 18 U.S.C. §1964(c), and Va. Ann. Code §18.2-500(a);
- C. That defendants be ordered to pay plaintiffs' costs and attorneys' fees pursuant to 15 U.S.C. § 15, 18 U.S.C. §1964(c), and Va. Ann. Code §18.2-500(a);
- D. For an order that the United States registrations of the Blue Cross/Blue Shield marks be cancelled for misusing those marks;
- E. For an order that Blue Cross and Blue Shield Association is equitably estopped from asserting any common law trademark and service mark rights in the Blue Cross and Blue Shield marks for misusing those marks;
- F. For an award of punitive damages from Trigon Healthcare, Inc.;
- and
- G. For such other and further relief as may be just and proper.

Respectfully submitted,

Date: August 16, 2000

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Date: August \_\_\_\_, 2000

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