

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80203</p>	<p>DATE FILED: February 26, 2024 4:16 PM FILING ID: 294C0C6E50F53 CASE NUMBER: 2024CV30595</p>
<p>STATE OF COLORADO, ex rel., PHILIP J. WEISER, ATTORNEY GENERAL Plaintiff, v. U.S. ANESTHESIA PARTNERS OF COLORADO, INC., Defendant</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>PHILIP J. WEISER Attorney General STEVEN M. KAUFMANN, Reg No. 14153* Deputy Solicitor General JAN M. ZAVISLAN, Reg. No. 11636* Senior Counsel PATRICK L. SAYAS, Reg. No. 29672* Senior Assistant Attorney General ARTHUR BILLER, Reg. No. 53670* Assistant Attorney General II J. GREG WHITEHAIR, Reg. No. 13523* Assistant Attorney General II CONOR MAY, Reg No. 56355* Assistant Attorney General ARIC J. SMITH, Reg. No. 57461* Assistant Attorney General Colorado Department of Law Ralph L. Carr Colorado Judicial Center 1300 Broadway, 10th Floor Denver, Colorado 80203 Telephone: (720) 508-6000 *Counsel Of Record</p>	<p>Case Number: Div:</p>
<p>STIPULATED CONSENT AGREEMENT AND JUDGMENT</p>	

Plaintiff, the State of Colorado, by and through Philip J. Weiser, Attorney General of the State of Colorado, has filed a Complaint for injunctive and other relief in this matter pursuant to the Colorado State Antitrust Act of 2023, Colorado Revised Statute §§ 6-4-101 *et seq.* (“CSAA”) alleging Defendant, U.S. Anesthesia Partners of Colorado, Inc. (“USAP Colorado”) committed certain violations of the CSAA. In filing the Complaint, Attorney General Weiser is acting in his law enforcement capacity as and as *parens patriae* as authorized by Colorado Revised Statute § 6-4-111. Defendant has denied the allegations contained therein.

Plaintiff and Defendant, USAP Colorado, have agreed to the stipulations and terms of this Stipulated Consent Agreement and Judgment (“Judgment”) as final adjudication of this civil action by the Court without the taking of proof and without trial, without this Judgment constituting evidence of or an admission by USAP Colorado, regarding any issue of law or fact alleged in the Complaint, and without USAP Colorado admitting any liability, and with all parties having waived their right to appeal.

This Judgment is entered into for the purposes of settlement and to avoid incurring costs associated with litigation.

PARTIES

1. The Attorney General is authorized to enforce the State’s antitrust laws as alleged in Plaintiff’s civil enforcement action and pursuant to Colorado Revised Statute § 6-4-111.

2. Defendant USAP Colorado is a Colorado corporation with its principal office or of business located at 8000 E. Maplewood Ave. #200, Greenwood Village, CO 80111.

It is hereby ORDERED:

INJUNCTIVE RELIEF

A. RELINQUISHMENT OF EXCLUSIVE HOSPITAL CONTRACTS WITH COMMONSPIRIT HEALTH

3. Relinquishment of Five Facility Agreements. USAP Colorado agrees to relinquish its facility agreements at five (5) hospitals in the Denver-Boulder area and in Durango:

- a. CommonSpirit - St. Anthony Hospital, 11600 W 2nd Place, Lakewood, CO 80228;
- b. CommonSpirit - St. Anthony North Hospital, 14300 Orchard Pkwy., Westminster, CO 80023;

- c. OrthoColorado Hospital, 11650 W 2nd Place, Lakewood, CO 80228;
- d. CommonSpirit - Longmont United Hospital, 1950 Mountain View Ave., Longmont, CO 80501; and
- e. CommonSpirit - Mercy Hospital, 1010 Three Springs Blvd., Durango, CO 81301.

4. Clinical Roster. On or before thirty (30) business days after the date of this Judgment, USAP Colorado will provide a current roster of all USAP clinicians primarily serving any of the five (5) hospitals listed in Paragraph 3.

5. Waiver of Non-compete Provisions for Clinicians at the Five Facilities. Until one year following the date of this Judgment, USAP Colorado will waive or release the non-compete provision in the employment agreement for any clinicians primarily serving the five (5) hospitals listed in Paragraph 3, and as reflected in the Clinical Roster provided to the Attorney General pursuant to Paragraph 4, to allow CommonSpirit to staff and support anesthesia services at the five (5) hospitals.

6. Employee Transition. USAP Colorado, to the extent within its control, will use its best efforts to work with clinicians transitioning to provide continued services at the five hospitals in Paragraph 3 and to select a mutually agreeable termination of employment date.

7. Written Transition Plan or Notice of Termination. USAP Colorado agrees, subject to CommonSpirit's agreement, on or before sixty (60) business days of the date of this Judgment, to provide the Attorney General with a comprehensive written plan of transition relating to the five (5) hospitals. In doing so, USAP Colorado, to the extent within its control, will act in good faith and use its best efforts to ensure continuity of care for patients and surgeons working at those hospitals. Should USAP Colorado need additional time to finalize a written transition plan due to ongoing discussions with CommonSpirit, the Attorney General will not unreasonably withhold agreement on granting USAP Colorado additional time. In the event USAP Colorado is unable to reach a mutually agreed upon transition plan with CommonSpirit within sixty (60) business days of the date of this Judgment, or during such agreed upon extension of that sixty (60) day period, USAP Colorado will provide written notice of termination of the agreement for such facilities. USAP Colorado agrees to continue to act in good faith and use its best efforts to achieve a mutually agreed upon transition plan in the event it gives CommonSpirit a notice of termination. Such notice of termination shall be for a period of at least 180 days.

B. REPORTING OBLIGATIONS

8. Advance Notice of Transactions. For a period of three (3) years following the date of this Judgment, USAP Colorado agrees to provide sixty (60)

days advance written notice of the stock or asset acquisition of any other anesthesia practice group in Colorado, or the employment by USAP Colorado of ten (10) or more clinicians from the same anesthesia practice group in Colorado if those clinicians are all hired by USAP Colorado within a 30 day period.

9. Advance Notice of New Exclusive Agreements. USAP Colorado, for a period of 3 years following the date of this Judgment, shall provide sixty (60) days advance written notice of the execution of any new exclusive contract relative to a hospital in Colorado. This provision does not apply to contract renewals.

C. RESTRICTIVE COVENANTS IN EMPLOYMENT CONTRACTS

10. Release of Non-Compete Agreements. USAP Colorado will release the non-compete provision in a clinician's employment agreement, as such provision would otherwise apply to a facility serviced by USAP Colorado in Denver, in the event (1) USAP Colorado terminates its agreement to provide services at any such facility, or (2) any such facility terminates such agreement for breach of that agreement.

11. Modification of Non-Compete Agreements. USAP Colorado agrees that all existing clinicians and any new clinician hires will have non-compete provisions that are narrowly tailored to include only those facilities where that clinician has provided anesthesia services on behalf of USAP Colorado.

12. Phase Out of Non-Compete Agreements. USAP Colorado agrees to phase out the non-compete provisions in its employment agreements over the course of eighteen (18) months following this Judgment or as of the effective date of a legislative ban on physician non-compete agreements, whichever occurs first. Assuming no legislative action, USAP Colorado may not include in its employment agreements non-competition provisions from the time the phase-out is complete until eight (8) years following the date of entry of this Judgment. Thereafter, USAP Colorado will follow Colorado law as it exists at the time with respect to non-competes.

13. Non-Solicitation Provisions of Employment Agreements. USAP Colorado agrees that all non-solicitation provisions in employment agreements may apply only to certain "highly compensated workers" as defined in C.R.S. § 8-2-113(2)(c)(II) and may be no broader than reasonably necessary to protect USAP Colorado's legitimate interest in protecting trade secrets, as mandated by Colorado Revised Statutes § 8-2-113(2)(d).

14. Revisions to Physician and Clinician Restrictive Covenants. Within thirty (30) business days after the entry of this Judgment, USAP Colorado will make the revisions to its new employment agreements necessary to comply with Paragraphs 11 and 13 and shall provide notice of non-enforcement to existing

clinicians subject to employment agreements including provisions broader than those allowed under this Judgment. The Parties agree that the revisions to USAP Colorado's employment agreement reflected in Exhibit A to the Parties' separate letter agreement dated February 23, 2024, satisfy the requirements of Paragraphs 11 and 13.

15. Time Period for Provisions Related to Restrictive Covenants. USAP Colorado's obligations pursuant to Paragraphs 10, 11, 12, and 14 shall expire no later than eight (8) years following the date of entry of this Judgment.

D. RELEASE

16. The State of Colorado, *ex rel.* Philip J. Weiser, Attorney General, acknowledges by its execution hereof that this Stipulated Consent Agreement and Judgment constitutes a complete settlement and release of all claims and hereby releases U.S. Anesthesia Partners of Colorado, Inc., U.S. Anesthesia Partners, Inc., U.S. Anesthesia Partners Holdings, Inc. and each of their current or former owners, shareholders, officers, directors, affiliates, agents, attorneys, and/or employees, and each of their respective affiliates, from any and all claims that could be asserted by the Attorney General under the CSAA or related consumer protection laws or federal antitrust laws that relate to, or are based on USAP Colorado's alleged anticompetitive conduct between 2014 and the present, including its acquisitions of physician practices within Colorado, USAP Colorado's market power in the Denver and Durango markets for surgical anesthesia services, USAP Colorado's rates charged to commercial health plans in Colorado, USAP Colorado's agreements with facilities in Colorado, and/or its restrictive covenants in employment agreements in Colorado.

17. Nothing herein precludes the Attorney General from enforcing the provisions of this Judgment, or from pursuing any law enforcement action with respect to the acts or practices of USAP Colorado not covered by the Release and this Judgment or any acts or practices of USAP Colorado conducted after the entry of this Judgment. The fact that such conduct was not expressly prohibited by the terms of this Consent Judgment shall not be a defense to any such enforcement action.

E. PAYMENT TO STATE

18. Judgment is hereby rendered against Defendant and in favor of the Plaintiff in the total amount of \$200,000. The money received by Colorado shall be used in the Attorney General's sole discretion for reimbursement of the State's actual costs and attorneys' fees. Payment shall be made, with a reference to "*State of Colorado ex rel. Philip J. Weiser v. U.S. Anesthesia Partners of Colorado, Inc.*," to:

Ralph L. Carr Colorado Judicial Center
Attorney General's Office
Attention: Financial Services
1300 Broadway, 10th Floor
Denver, Colorado 80203

F. NOTICES

19. Unless otherwise provided, any notices or documents required to be sent to the Parties pursuant to this Judgment shall be sent to the following address via overnight courier and electronic mail (unless after the Effective Date, a different address is communicated in writing by the party requesting a change of designee or address):

- a. For the Attorney General:

Jan M. Zavislan
1300 Broadway, 7th Floor
Denver, CO 80203
jan.zavislan@coag.gov

- b. For Defendant:

U.S. Anesthesia Partners, Inc.
c/o General Counsel
12222 Merit Drive, Suite 700
Dallas, TX 75251

G. GENERAL PROVISIONS

20. No Admission of Liability. The terms of this Judgment are not intended to be construed as an admission or concession or evidence of liability or wrongdoing on the part of USAP Colorado. Both Parties are entering into this Stipulated Consent Judgment for the purpose of compromising and resolving disputed claims and to avoid the expense of further litigation.

21. Use of Settlement in Business Activity. Under no circumstances shall this Consent Judgment, the name of the Attorney General, the name of the District Attorney, or the names of any of the State's employees or representatives be used by Defendant or any of their employees, representatives, or agents as an endorsement of any conduct, past or present, by Defendants.

22. Retention of Jurisdiction. This Court shall retain jurisdiction over this matter for the purpose of enabling any party to this Judgment to apply to the Court at any time for any further orders which may be necessary or appropriate for the construction, modification, or execution of this Judgment, and for the enforcement of compliance herewith and the punishment of violations hereof.

23. Contempt. The parties understand and agree that a finding of any violation of any term or provision of this Judgment may give rise to all contempt remedies available to the Court, including those provided under C.R.S § 6-1-112(1)(b).

24. Attorney General's Successors in Interest. The terms and provisions of this Judgment may be enforced by the current Colorado Attorney General, and by any of the Attorney General's authorized agents or representatives, as well as by any of the Attorney General's successors in interest, agents, or representatives.

25. Defendant's Successors in Interest. The terms of this Judgment apply to USAP Colorado, its successors, assigns, and past and present directors, officers, employees, representatives, agents, principals, affiliates, parents, subsidiaries, operating companies, predecessors, divisions or other internal organizational units of any kind or any other entities or persons acting in concert or participation with USAP Colorado. In no event shall assignment of any right, power, or authority under this Judgment avoid compliance with this Judgment.

26. Severability. If any provision of this Judgment shall be held unenforceable, the Judgment shall be construed as if such provision did not exist.

27. Execution in Counterparts. This Judgment may be executed in counterparts, that, together, will constitute one whole document.

28. Colorado Law. This Judgment shall be interpreted according to the laws of Colorado.

29. Costs and Fees. Other than the amounts described in Paragraph 18, all costs associated with this action and Judgment shall be borne by the party incurring same.

30. Complete Agreement. This Judgment sets forth the entire agreement between the parties.

31. Amendment. This Stipulated Consent Judgment may be amended solely by written agreement signed by the Parties.

SO ORDERED THIS ___ DAY OF _____ 2024:

District Court Judge

Approved as to form:

Defendant, U.S. Anesthesia Partners of Colorado, Inc.:

By: /s/Len Wright

Len Wright, President

Original Signature on File

Date: February 23, 2024

Counsel for U.S. Anesthesia Partners of Colorado, Inc.:

By: /s/Katharine M. O'Connor

Katharine M. O'Connor

McDermott Will & Emery LLP

444 West Lake Street, Suite 4000

Chicago, IL 60606

Date: February 23, 2024

Phil Weiser, Colorado Attorney General

By: /s/Jan M. Zavislan

Jan M. Zavislan

Senior Counsel | Consumer Protection Section

Colorado Department of Law

1300 Broadway, 7th Floor

Denver, CO 80203

Date: February 23, 2024