

United States Senate

WASHINGTON, DC 20510

November 26, 2023

Robert Coward
Chief Executive Officer
U.S. Anesthesia Partners
12222 Merit Drive, Suite 700
Dallas, Texas 75251

Dear Mr. Coward,

We are writing regarding an alarming investigation that revealed that U.S. Anesthesia Partners (USAP) and its parent company, Welsh, Carson, Anderson & Stowe,¹ have used anticompetitive practices to reduce patients' quality of care, increase prices, and suppress workers' wages.

The investigation by *The Washington Post* found that USAP and its private equity (PE) backers bought up anesthesiology practices in the Denver area, "rolling up" the companies to form a group that could leverage monopoly power to raise patient costs and force physicians to prioritize profits over patients.² Serial roll ups – defined as a series of smaller acquisitions by firms that result in a considerable increase in market share³ – are a favorite of the PE industry.⁴ After USAP consolidated market power and appeared to pressure physicians in the area to raise prices, USAP continued using anticompetitive tactics to maintain its advantage – including restrictive non-compete agreements to prevent physicians from working for other practices in the area, cutting off choices for patients.⁵

USAP's growth strategy in Denver is a concerning sign for markets across the country. Since 2012, USAP has "built a staff of more than 4,500 clinicians and spread to nine states," using the same playbook in cities across the U.S. and providing a blueprint for further consolidation.⁶ Earlier this month, the Federal Trade Commission filed a complaint against USAP and its parent company, Welsh, Carson, Anderson & Stowe for similar practices in Texas, citing a "multi-year

¹ Welsh, Carson, Anderson & Stowe, Healthcare Companies, US Anesthesia Partners, <https://www.wcas.com/healthcare/companies/us-anesthesia-partners>.

² Washington Post, "Financiers bought up anesthesia practices, then raised prices," Peter Whoriskey, June 29, 2023, <https://www.washingtonpost.com/business/2023/06/29/private-equity-medical-practices-raise-prices/>.

³ American Economic Liberties Project, "The Roll-Up Economy: The Business of Consolidating Industries with Serial Acquisitions," December 2022, p. 6, <http://www.economicliberties.us/wp-content/uploads/2022/12/Serial-Acquisitions-Working-Paper-R4-2.pdf>.

⁴ Fortune, "Private equity's favorite way to make acquisitions may be illegal, FTC Chair Lina Khan says," Paige Hagy, July 19, 2023, <https://fortune.com/2023/07/19/private-equity-ftc-mergers-acquisitions-rollup-strategy-lina-khan-antitrust/>.

⁵ Washington Post, "Financiers bought up anesthesia practices, then raised prices," Peter Whoriskey, June 29, 2023, <https://www.washingtonpost.com/business/2023/06/29/private-equity-medical-practices-raise-prices/>.

⁶ *Id.*

anticompetitive scheme to consolidate anesthesiology practices,” and a “set of unlawful agreements” to keep physicians locked in.⁷

PE ownership of physician practices is already a major concern. For instance, “in 28% of metropolitan statistical areas (MSAs), a single PE firm has “more than 30% market share by full-time-equivalent physicians, and in 13% of MSAs, the single [PE] firm market share exceeds 50%.”⁸ Similar to USAP’s model, which is concentrated in multiple metropolitan areas including Houston, Denver, and Orlando,⁹ many PE firms will monopolize a physician specialty in multiple MSAs, eventually driving up costs for the entire specialty.¹⁰

And USAP leveraged their monopoly power to force physicians into restrictive non-compete agreements that further drive up costs and cut options for patients – in some cases, driving physicians out of state to continue practicing.¹¹ In light of this troubling report, we request information about your company’s monopolistic acquisition practices, use of non-compete agreements, and the profits made by your company while your employees and patients suffered.

USAP Used Private Equity’s Playbook to Accumulate Monopoly Power

Since its founding in 2012 by the PE firm Welsh, Carson, Anderson & Stowe, USAP has engaged in anticompetitive practices that appeared to be designed to jack up prices and suck up as much profit as possible, with detrimental effects to patients and doctors.¹² In 2015, USAP bought up the largest anesthesiology groups in the Denver area, quickly becoming Colorado’s largest anesthesiology practice, and almost immediately began to use its monopoly power to extract higher prices from patients and their insurers.¹³

USAP, backed by its PE investors, raised the company’s negotiated rates with insurers “at the rate of 3.7 percent annually from 2014 to 2019[, resulting in] ... a total increase of 20 percent over the five-year period.”¹⁴ USAP’s prices rose “about twice as fast as prices nationally,” prompting pushback from insurers who claimed that USAP was attempting to charge 70 percent

⁷ Federal Trade Commission, “FTC Challenges Private Equity Firm’s Scheme to Suppress Competition in Anesthesiology Practices Across Texas,” press release, September 21, 2023, <https://www.ftc.gov/news-events/news/press-releases/2023/09/ftc-challenges-private-equity-firms-scheme-suppress-competition-anesthesiology-practices-across>.

⁸ American Antitrust Institute, Petris Center, and Washington Center for Equitable Growth, “Monetizing Medicine: Private Equity and Competition in Physician Practice Markets,” Richard M. Scheffler, Laura Alexander, Brent D. Fulton, Daniel R. Arnold, and Ola A. Abdelhadi, July 10, 2023, https://www.antitrustinstitute.org/wp-content/uploads/2023/07/AAI-UCB-EG_Private-Equity-I-Physician-Practice-Report_FINAL.pdf.

⁹ Washington Post, “Financiers bought up anesthesia practices, then raised prices,” Peter Whoriskey, June 29, 2023, <https://www.washingtonpost.com/business/2023/06/29/private-equity-medical-practices-raise-prices/>.

¹⁰ American Antitrust Institute, Petris Center, and Washington Center for Equitable Growth, “Monetizing Medicine: Private Equity and Competition in Physician Practice Markets,” Richard M. Scheffler, Laura Alexander, Brent D. Fulton, Daniel R. Arnold, and Ola A. Abdelhadi, p. 44, July 10, 2023, https://www.antitrustinstitute.org/wp-content/uploads/2023/07/AAI-UCB-EG_Private-Equity-I-Physician-Practice-Report_FINAL.pdf.

¹¹ Washington Post, “Financiers bought up anesthesia practices, then raised prices,” Peter Whoriskey, June 29, 2023, <https://www.washingtonpost.com/business/2023/06/29/private-equity-medical-practices-raise-prices/>.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

more than competitors in Colorado.¹⁵ Although these rates are negotiated directly with insurers, higher prices “affect everyone because the insurers pass on the higher costs ... and much of the burden falls on patients and their families.”¹⁶

According to a former USAP Colorado employee, “the company became big enough to influence pricing and raised prices because it could,” using its monopoly power in Colorado to not only raise prices, but force smaller anesthesiology practices it bought to raise their prices to USAP rates.¹⁷ By 2019, USAP was the largest provider of anesthesiology services to Medicare beneficiaries in the Denver market, controlling approximately 30% of the anesthesiology market in the state of Colorado.¹⁸

We have frequently raised the alarm about the deleterious impact of PE on patient care.¹⁹ PE’s involvement in health care markets has exacerbating problems like surprise medical billing, inadequate training, and a lack of oversight and due process.²⁰ One study found that “patient costs rose by 26% after anesthesiology practices were taken over by PE firms,” and PE-backed anesthesiology groups have faced allegations of short-staffing that put patients at risk.²¹ But PE acquisitions haven’t been limited to anesthesiology, with PE firms moving into health care services from rural hospitals to nursing homes and hospice centers to health care billing management and debt collection systems.²²

On July 9, 2021, President Biden issued the *Executive Order on Promoting Competition in the American Economy* (Executive Order on Competition).²³ The President’s Executive Order states

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Wall Street Journal, “FTC Probes Market Power of One of Country’s Biggest Anesthesia Providers,” Dave Michaels, October 1, 2022, <https://www.wsj.com/articles/ftc-probes-market-power-of-one-of-countrys-biggest-anesthesia-providers-11664644401>.

¹⁹ Letter from Senator Elizabeth Warren, et al., to Kindred at Home President and CEO Causby, August 6, 2021, <https://www.warren.senate.gov/imo/media/doc/080621%20Wyden%20Brown%20Warren%20Kindred%20Hospice%20Private%20Equity%20Letter.pdf>; Letter from Senator Elizabeth Warren, et al., to KKR & Co CEOs Bae and Nuttall, May 19, 2022, <https://www.warren.senate.gov/imo/media/doc/2022.05.18%20Letter%20to%20KKR%20on%20BrightSpring%20Health%20Services.pdf>

²⁰ NBC News, “Private equity firms now control many hospitals, ERs and nursing homes. Is it good for health care?” Gretchen Morgenson and Emmanuelle Saliba, May 13, 2020, <https://www.nbcnews.com/health/health-care/private-equity-firms-now-control-many-hospitals-ers-nursing-homes-n1203161>; USA Today, “Dentists under pressure to drill ‘healthy teeth’ for profit, former insiders allege,” David Heath, Mark Greenblatt, and Aysha Bagchi, May 19, 2020, <https://www.usatoday.com/in-depth/news/investigations/2020/03/19/dental-chain-private-equity-drills-healthy-teeth-profit/4536783002/>.

²¹ NBC News, “This won’t hurt a bit: The anesthesiologist who is putting you under may work for a private-equity firm,” Gretchen Morgenson, October 10, 2022, <https://www.nbcnews.com/health/health-care/anesthesiologist-putting-may-work-private-equity-firm-rcna51071>.

²² NBC News, “Private equity firms now control many hospitals, ERs and nursing homes. Is it good for health care?” Gretchen Morgenson and Emmanuelle Saliba, May 13, 2020, <https://www.nbcnews.com/health/health-care/private-equity-firms-now-control-many-hospitals-ers-nursing-homes-n1203161>; USA Today, “Dentists under pressure to drill ‘healthy teeth’ for profit, former insiders allege,” David Heath, Mark Greenblatt, and Aysha Bagchi, May 19, 2020, <https://www.usatoday.com/in-depth/news/investigations/2020/03/19/dental-chain-private-equity-drills-healthy-teeth-profit/4536783002/>.

²³ The White House, “Executive Order on Promoting Competition in the American Economy,” July 9, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>.

that it is the policy of his Administration to “combat the excessive concentration of industry, the abuses of market power, and the harmful effects of monopoly and monopsony . . . in healthcare markets,” and specifically encourages the Federal Trade Commission (FTC) and Department of Justice (DOJ) to review merger guidelines and consider whether to revise them.²⁴

In accordance with this instruction, the FTC and DOJ have proposed revised merger guidelines aimed at helping the agencies vigorously enforce antitrust laws. The draft merger guidelines, which were informed by the testimony of, among other groups, health care workers and patients, take into account “the realities of how firms do business in the modern economy,”²⁵ potentially including companies like USAP that have consolidated health care market. Specifically, the draft guidelines call out as potentially illegal transactions that would “entrench or extend a dominant [company] position”²⁶ or “further a trend toward concentration,”²⁷ and, crucially, clarify that the agencies may examine “the whole series” of mergers by a company to determine the cumulative effect of multiple transactions that are part of an overall pattern or strategy.²⁸ These enforcement guidelines provide insight into the potential illegality of and future enforcement against USAP’s anticompetitive serial roll-ups or attempts to gain market power.

The FTC and DOJ have already begun to zero in on the business practices of PE platform deals for competition-related concerns, including USAP specifically, given concerns that the “anesthesia practice has amassed too much pricing power in its markets.”²⁹ It is no surprise that, in the past several months, USAP and other large physician groups backed by PE firm Welsh, Carson, Anderson & Stowe have hired prominent lobbying firm Forbes Tate Partners to lobby “issues related to health care consolidation.”³⁰

USAP’s Use of Non-Compete Agreements to Maintain Monopoly Power

Of particular concern to me is USAP’s use of non-compete agreements. USAP’s market power has appeared to enable the company to force its anesthesiologists to sign anticompetitive non-compete agreements, creating a vicious cycle that further entrenches USAP’s monopoly power and cuts off choice for patients and physicians. Former USAP physicians reported that approximately 1 in 3 doctors employed by USAP left the company over a three-year period, disillusioned with the higher costs for patients.³¹ However, under the terms of their non-compete

²⁴ *Id.*

²⁵ U.S. Federal Trade Commission, “FTC and DOJ Seek Comment on Draft Merger Guidelines,” July 19, 2023, <https://www.ftc.gov/news-events/news/press-releases/2023/07/ftc-doj-seek-comment-draft-merger-guidelines>.

²⁶ U.S. Department of Justice and Federal Trade Commission, “Merger Guidelines,” https://www.ftc.gov/system/files/ftc_gov/pdf/p859910draftmergerguidelines2023.pdf, p. 18-21, Guideline 7.

²⁷ U.S. Department of Justice and Federal Trade Commission, “Merger Guidelines,” https://www.ftc.gov/system/files/ftc_gov/pdf/p859910draftmergerguidelines2023.pdf, p. 21-22, Guideline 8.

²⁸ U.S. Department of Justice and Federal Trade Commission, “Merger Guidelines,” https://www.ftc.gov/system/files/ftc_gov/pdf/p859910draftmergerguidelines2023.pdf, p. 22, Guideline 9.

²⁹ Stat News, “Private equity-owned physician groups plan lobbying push on mergers,” BoB Herman, August 1, 2023, https://www.statnews.com/2023/08/01/welsh-carson-physician-groups-merger-lobbying/?utm_campaign=pharmalot&utm_medium=email&_hsmi=268655262&_hsenc=p2ANqtz--LPRnblpMTrBrpbFIEz0JPx15hJSrBOHIPCBgZtxSdZeR5TX82umWd9sNjcwatDiiq1pVfBJwKPhi0QEgPuqhVdYFXcF1GAQpT88YE6kFHLqCieSg&utm_content=268655262&utm_source=hs_email.

³⁰ *Id.*

³¹ Washington Post, “Financiers bought up anesthesia practices, then raised prices,” Peter Whoriskey, June 29, 2023, <https://www.washingtonpost.com/business/2023/06/29/private-equity-medical-practices-raise-prices/>.

agreements, physicians who attempted to leave USAP and work elsewhere in the Denver area could have been required to pay “damages” amounting to more than \$200,000. Because of USAP’s market dominance in Colorado, the non-compete agreements forced some anesthesiologists to leave the state to continue practicing.³² In limiting the places that a physician may work, non-compete agreements not only hurt physicians trying to practice, but also have a detrimental effect on patients who bear higher costs and have access to fewer choices for their care.

Examples of the harmful effects of USAP’s non-compete agreements abound. Peter Harkness, a practicing physician who previously defended the company in front of the Federal Trade Commission (FTC), sued USAP alongside several anesthesiologists to void the “unreasonably restrictive non-compete clause” in their employment contracts.³³ In reference to the anticompetitive focus exemplified by the company’s non-compete agreements, Harkness argued that USAP repeatedly failed to prioritize patients and care, echoing other anesthesiologists who said that, under USAP, their practices “went from ‘patients first’ to ‘we want to make it bigger, we want to make it more profitable.’”³⁴ One anesthesiologist argued that USAP “took a very forward-thinking group that was focused on quality and turned it into a private-equity-backed money machine that sends profits to the East Coast by making patients pay more for their insurance benefits.”³⁵ Despite physicians’ complaints that they were “overworked and paid below market rate,” USAP issued more than \$1.3 billion in dividends since its creation in 2012.³⁶

We have long argued against the use of restrictive non-compete agreements, and supported efforts by the FTC to prohibit their use.³⁷ Non-compete clauses in the health care industry reduce patient access to care,³⁸ increase health care costs,³⁹ limit a physician’s ability to negotiate,⁴⁰ stifle competition,⁴¹ contribute to labor shortages,⁴² and limit the ability of workers to speak out about unfair or dangerous practices.⁴³ USAP’s use of these clauses, as the company rolled up more and

³² *Id.*

³³ Washington Post, “Financiers bought up anesthesia practices, then raised prices,” Peter Whoriskey, June 29, 2023, <https://www.washingtonpost.com/business/2023/06/29/private-equity-medical-practices-raise-prices/>.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Letter from Senator Elizabeth Warren, et al., to FTC Commissioner Lina Khan, April 19, 2023,

https://www.warren.senate.gov/imo/media/doc/230418_CommentLettertoFTCinSupportofNoncompeteRule.pdf.

³⁸ JAMA Health Forum, “Ending Physician Noncompete Agreements—Time for a National Solution,” Erik Smith, December 3, 2021, <https://jamanetwork.com/journals/jama-health-forum/fullarticle/2786894>; New England Journal of Medicine, “Noncompete Agreements — The Need for a Refresh,” Samyukta Mullangi, Mohit Agrawal, and Barak Richman, August 11, 2022, <https://www.nejm.org/doi/full/10.1056/NEJMp2205013>.

³⁹ American Economic Association, “Physician Practice Organization and Negotiated Prices: Evidence from State Law Changes,” Naomi Hausman and Kurt Lavetti, April 2021, <https://www.aeaweb.org/articles?id=10.1257/app.20180078>

⁴⁰ JAMA Health Forum, “Ending Physician Noncompete Agreements—Time for a National Solution,” Erik Smith, December 3, 2021, <https://jamanetwork.com/journals/jama-health-forum/fullarticle/2786894>; New England Journal of Medicine, “Noncompete Agreements — The Need for a Refresh,” Samyukta Mullangi, Mohit Agrawal, and Barak Richman, August 11, 2022, <https://www.nejm.org/doi/full/10.1056/NEJMp2205013>.

⁴¹ *Id.*

⁴² American Academy of Family Physicians, Letter to FTC on Non-Compete Clause Rulemaking, April 6, 2023, p. 4, <https://www.aafp.org/dam/AAFP/documents/advocacy/legal/antitrust/LT-FTC-NoncompeteClauseRulemaking-040623.pdf>

more anesthesiology practices in the area, appears to have caused damage to patients and physicians, while helping the company amass greater market power and continue raising prices.

Conclusion

USAP is emblematic of the long-standing problems associated with PE's involvement in our health care system. The practices described in the recent report and the FTC's lawsuit are deeply concerning and suggest that USAP has used anticompetitive practices to build up monopoly power, which it has leveraged to decrease quality of care, increase costs for patients, and reduce physician autonomy.

To understand the impact USAP has had on anesthesiology practices across the country, we ask that you provide answers to the following questions no later than December 11, 2023:

USAP

1. For each year since and including 2015, please identify the names and positions of each of the five highest paid USAP executives, and provide each of the individuals' total annual compensation for that year, including pay, bonuses, or other compensation. Please provide a description of the basis for any bonuses received by these individuals.
2. Please list all dividends issued since 2012, including:
 - a. Amount issued; and
 - b. Recipients.

Monopoly Power

3. Please list all anesthesiology practices USAP has acquired in the United States since 2012.
4. Please provide the following information for each practice operated by USAP for each full year since its acquisition:
 - a. Total revenue, the total revenue from Medicare, and total revenue from Medicaid;
 - b. Rates that USAP has charged, on average, to each of the following payers for anesthesia services: Medicare, Medicaid, and commercial insurers.
 - c. Total number of patients served by each facility, and the total number of patients whose care is paid for by Medicare, and by Medicaid;
 - d. Net income of each practice;
 - e. Total number of employed physicians at each practice; and

Treatment of Physicians


5. How many non-compete agreements or clauses have been enforced against USAP physicians?
 - a. What fines, damages, or other payments have physicians subject to USAP non-compete agreements or clauses been required to pay to continue operating in the

⁴³ Smith EB. Ending Physician Noncompete Agreements—Time for a National Solution. JAMA health forum. 2021;2:e214018-e214018., <https://jamanetwork.com/journals/jama-health-forum/fullarticle/2786894>

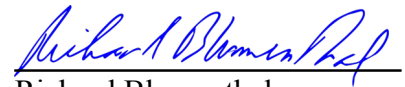
same region after leaving USAP? Please list the amount of each payment collected from physicians accused of violating non-compete clauses.

6. Please provide a copy of USAP's standard employment contract for its physician employees.
 - a. On what grounds may USAP terminate employment contracts with employed physicians? Please describe what processes, if any, exist for USAP physicians to appeal or further adjudicate a termination.

Sincerely,



Elizabeth Warren
United States Senator



Richard Blumenthal
United States Senator