

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

NAHEED ALAM, M.D., TRUDY BAKER, M.D.,
HERBERT DUVIVIER, M.D., J.D., LIVELEEN M.
GILL, M.D., HAIDER KHADIM, M.D., RONALD
KOSSOW, M.D., DAVID MARCHETTI, M.D.,
ALVIN M. PANAHON, M.D., YASHODHARA
SATCHIDANAND, M.D., VILASINI M.
SHANBHAG, M.D., KYU H. SHIN, M.D., RAMAN
SOOD, M.D., YUBAO WANG, M.D., JOHNNY YAP,
M.D., W. SAM YI. M.D. and CCS MEDICAL, PLLC.
45 Spindrift Drive, Suite 102
Williamsville, New York, 14221

Plaintiffs,

VERIFIED COMPLAINT

Index No. I 2016-_____

v.

INDEPENDENT HEALTH ASSOCIATION, INC;
INDIVIDUAL PRACTICE ASSOCIATION
OF WESTERN NEW YORK, INC.;;
INDEPENDENT HEALTH BENEFITS
CORPORATION; INDEPENDENT HEALTH
CORPORATION; and IPA-CARE
511 Farber Lakes Drive
Buffalo, NY 14221

Defendants.

Plaintiffs Naheed Alam, M.D., Trudy Baker, M.D., Herbert Duvivier, M.D., Jr.,
Liveleen M. Gill, M.D., Haider Khadim, M.D., Ronald Kossow, M.D., David Marchetti,
M.D., Alvin M. Panahon, M.D., Yashodhara Satchidanand, M.D., Vilasini M. Shanbhag,
M.D., Kyu H. Shin, M.D., Raman Sood, M.D., Yubao Wang, M.D., Johnny Yap, M.D., W.
Sam Yi. M.D. and CCS Medical, PLLC (collectively the “Physicians” or “CCS
Oncology”), by and through their counsel, Colucci & Gallaher, P.C., and complaining of
the defendants, herein alleges:

1. Naheed Alam, M.D. is an individual residing in New York, with a principal place of business at 45 Spindrift Drive, Suite 102 Williamsville, New York, 14221. Dr. Alam is a physician who is board certified in internal medicine and hematology, and focuses her practice primarily on hematology and oncology.

2. Trudy Baker, M.D. is an individual residing in New York, with a principal place of business at 45 Spindrift Drive, Suite 102 Williamsville, New York, 14221. Dr. Baker is a physician who focuses her practice primarily on gynecologic oncology.

3. Herbert Duvivier, M.D., J.D., is an individual residing in New York, with a principal place of business at 45 Spindrift Drive, Suite 102 Williamsville, New York, 14221. Dr. Duvivier is a physician who is board certified in hematology and medical oncology, and focuses his practice primarily on hematology and oncology.

4. Liveleen M. Gill, M.D. is an individual residing in New York, with a principal place of business at 45 Spindrift Drive, Suite 102 Williamsville, New York, 14221. Dr. Gill is a physician who focuses her practice primarily on medical oncology.

5. Haider Khadim, M.D. is an individual residing in New York, with a principal place of business at 45 Spindrift Drive, Suite 102 Williamsville, New York, 14221. Dr. Khadim is a physician who is board certified in Medical Oncology, and focuses his practice primarily on hematology and oncology.

6. Ronald Kossow, M.D. is an individual residing in New York, with a principal place of business at 45 Spindrift Drive, Suite 102

Williamsville, New York, 14221. Dr. Kossow is a physician who is board certified in Radiation Oncology, and focuses his practice primarily on radiation oncology treatments.

7. David Marchetti, M.D. is an individual residing in New York, with a principal place of business at 45 Spindrift Drive, Suite 102 Williamsville, New York, 14221. Dr. Marchetti is a physician who is board certified in Obstetrics and Gynecology and Gynecologic Oncology, and focuses his practice primarily on gynecologic oncology.

8. Alvin M. Panahon, M.D. is an individual residing in New York, with a principal place of business at 45 Spindrift Drive, Suite 102 Williamsville, New York, 14221. Dr. Panahon is a physician who is board certified in radiation oncology, and focuses his practice primarily on radiation oncology.

9. Yashodhara Satchidanand, M.D. is an individual residing in New York, with a principal place of business at 45 Spindrift Drive, Suite 102 Williamsville, New York, 14221. Dr. Satchidanand is a physician who is board certified in Hospice and Palliative Care, and focuses her practice primarily on palliative care.

10. Vilasini M. Shanbhag, M.D. is an individual residing in New York, with a principal place of business at 45 Spindrift Drive, Suite 102 Williamsville, New York, 14221. Dr. Shanbhag is a physician who is board certified in radiation oncology, and focuses her practice primarily on radiation oncology.

11. Kyu H. Shin, M.D. is an individual residing in New York, with a principal place of business at 45 Spindrift Drive, Suite 102 Williamsville, New York, 14221. Dr. Shin is a physician who is board certified in

Radiation Oncology, and focuses his practice primarily on providing community-based radiation oncology services.

12. Raman Sood, M.D. is an individual residing in New York, with a principal place of business at 45 Spindrift Drive, Suite 102 Williamsville, New York, 14221. Dr. Sood is a physician who is board certified in Medical Oncologist, and focuses his practice primarily on surgery, medical oncology, radiation therapy and cancer screening.

13. Yubao Wang, M.D. is an individual residing in New York, with a principal place of business at 45 Spindrift Drive, Suite 102 Williamsville, New York, 14221. Dr. Wang is a physician who is board certified in Medical Oncologist, and focuses his practice primarily on hematology and oncology.

14. Johnny Yap, M.D. is an individual residing in New York, with a principal place of business at 45 Spindrift Drive, Suite 102 Williamsville, New York, 14221. Dr. Yap is a physician who focuses his practice primarily on radiation oncology.

15. W. Sam Yi, M.D. is an individual residing in Erie County, New York, with a principal place of business at 45 Spindrift Drive, Suite 102 Williamsville, New York, 14221. Dr. Yi is a physician who is board certified in Radiation Oncology, and focuses his practice primarily on radiation oncology.

16. Each of the above Physicians is associated with CCS Medical, PLLC, d/b/a CCS Oncology, a domestic professional limited liability company located at 45 Spindrift Drive, Suite 102, Williamsville, New York 14221.

17. CCS Oncology, through the Physicians, provides comprehensive cancer services for all stages and types of cancer.

18. CCS Oncology's mission is, utilizing accessible, community based locations, to heal the whole patient—body, mind, and spirit—and ensure that the patient and the patient's loved ones understand the difficulties and sensitivities in cancer treatment.

19. To accomplish their mission, CCS Oncology physicians have established personal, longstanding, patient-physician relationships built on emotional bonds of trust and quality of care.

20. Defendant Independent Health Association, Inc. ("IHA") is a domestic not-for-profit corporation certified as a Health Maintenance Organization under Article 44 of the New York Public Health Law. IHA's principal place of business is 511 Farber Lakes Drive, Buffalo, NY 14221.

21. Defendant Individual Practice Association of Western New York, Inc. ("IPA/WNY") is a domestic not-for-profit corporation with its principal place of business at 511 Farber Lakes Drive, Buffalo, NY 14221.

22. Upon information and belief, IHA is the sole owner of IPA/WNY.

23. Upon information and belief, IPA/WNY is a practice association formed that contracts with participating physicians to provide health care services to Independent Health Association subscribers.

24. Defendant Independent Health Benefits Corporation ("IHBC") is a domestic not-for-profit corporation licensed under Article 43 of the New York Public Health Law, with its principal place of business at 511 Farber Lakes Drive, Buffalo, NY 14221.

25. Upon information and belief, IHA is the sole owner of IHBC.

26. Defendant Independent Health Corporation (“IHC”) is a domestic corporation with its principal place of business at 511 Farber Lakes Drive, Buffalo, NY 14221.

27. Upon information and belief, IHC is a subsidiary of IHA formed to arrange for health services covered in accordance with benefit plans established by entities such as employers, groups, unions, and insurers that provide health coverage for affiliated participants.

28. Upon information and belief, defendant IPA-Care was a domestic not-for-profit corporation with a principal place of business at 511 Farber Lakes Drive, Buffalo, NY 14221. IPA Care was formed for the purpose of arranging and delivering healthcare to IHA’s Government Program Members. Upon information and belief, IPA-Care was dissolved in 2011.

29. Collectively, the defendants are part of the Independent Health family of companies.

30. Upon information and belief, the Independent Health family of companies covers nearly 400,000 members throughout Western New York.

31. Upon information and belief, the Independent Health Family of companies covers Medicare patients throughout Western New York.

32. The Physicians, through CCS Oncology, provide genetic screening, medical oncology, radiation oncology, surgical oncology, supportive and palliative care to cancer patients throughout Western New York.

33. Each of the Physicians have had a Participating Physician Agreement with IPA/WNY. An example of the IPA/WNY Participating Physician Agreement, with amendments, is attached as **Exhibit A**.

34. Each of the Physicians have had a Participating Physician Agreement with IHBC. An example of the IHBC Participating Physician Agreement is attached as **Exhibit B**.

35. Each of the Physicians have had a Participating Physician Agreement with IHC. An example of the IHC Participating Physician Agreement is attached as **Exhibit C**.

36. Each of the Physicians have had a Participating Physician Agreement with IPA-Care. An example of the IPA-Care Participating Physician Agreement is attached as **Exhibit D**.

37. Under the terms of the various Participating Physician Agreements, the Physicians agreed to accept IHA enrollees as patients and to provide or arrange for Medically Necessary Covered Services (as defined therein) to IHA enrollees pursuant to the terms of the Agreement.

38. The IPA/WNY Agreement states:

Participating Physician may engage in open clinical dialogue with his/her Members and Participating Physician and nothing herein nor any IPA/WNY policy or procedure is intended to interfere with or in any way prohibit or penalize Participating Physician from open communication and disclosing to any Member or the Member's designated representative any information the Participating Physician deems appropriate regarding: (1) a condition or course of treatment including the availability of other treatment alternatives, therapies, consultations, or tests; (2) the provisions, terms or requirements of the Coverage Documents as they relate to the Member; or (3) medically necessary or appropriate care for the Member; provided, however, that Participating Physician

acknowledges his/her responsibility for the accuracy of all such information.

39. The IPA/WNY Agreement further states that

Nothing contained herein, nor any IPA/WNY policy or procedure, shall be construed to limit Participating Physician's or IPA/WNY's ability to file a complaint, make a report or comment to an appropriate governmental body regarding the policies or practices of the other party which the party making the report believes may negatively impact on the quality of, or access to, patient care.

Participating Physician may advocate to IHA or IPA/WNY on behalf of the Member for approval or coverage of a particular course of treatment or for the provision of healthcare services.

40. The IHBC, IHC, and IPA/Care Agreements contain similar covenants allowing Physicians to provide the care and advice that they believe is medically necessary.

41. The IHBC, IHC, and IPA/Care Agreements contain similar protections allowing Physicians to file complaints or make reports to governmental bodies.

42. Upon information and belief, the IHBC, IHC, and IPA/Care Agreements contain a requirement that IHA comply with all applicable state and federal law and regulations.

43. New York Public Health Law § 4406-d requires IHA to follow the duties set forth in that law for any non-renewal or termination of the IPA/WNY, IHBC, IHC, and IPA/Care Agreements.

44. The Code of Federal Regulations, 42 C.F.R. § 422.202, requires IHA to follow the duties set forth in the law for any non-renewal or termination of the IPA/WNY, IHBC, IHC, and IPA/Care Agreements with respect to the Medicare patients of CCS.

45. Under the terms of the Participating Provider Agreements, CCS Oncology agreed to accept enrollees of IHA as patients and to provide medically necessary health services pursuant to those agreements.

46. The Physicians have in fact accepted and treated thousands of IHA enrollees under the agreements, and do so to this day.

47. IHA requires certain health services to be authorized prior to the services being rendered.

48. When dealing with IHA under the Agreements, the Physicians quickly learned that they had far more difficulty obtaining pre-authorizations for tests and procedures for cancer patients enrolled in the various IHA plans than from the other insurers.

49. During the course of the Physicians relationship with IHA, the Physicians have regularly and repeatedly advocated on behalf of their patients in order to obtain preauthorization for medically necessary oncology tests and treatment. This advocacy has manifested itself in multiple forms, principally through telephone calls with IHA personnel that conduct the pre-authorizations for oncology services.

50. For example, CCS Oncology physicians have requested MyRisk for genetic testing, as this a preferred test that identifies an elevated risk for eight different cancers and captures more mutation carriers than the other major tests combined. IHA regularly denies the request, requiring the Physicians to use an inferior and less expensive test.

51. IHA has also put in place barriers to comprehensive genetic coagulation tests, requiring a sequential phased testing that is time consuming and can be detrimental to patient care.

52. CCS Oncology is also the only general oncology provider in Dunkirk, Medina, and Newfane, New York.

53. Plaintiff Physicians include Raman Sood, M.D. and Naheed Alam, M.D., the only general oncology providers within 50 miles of Dunkirk. The IHA enrollees that Dr. Sood and Dr. Alam have treated will now be forced to come to urban centers (such as Buffalo) to seek treatment. These include patients who do not drive or have the support mechanism in place to change physicians.

54. The Physicians have had numerous disputes with IHA over the type and cost of medications prescribed to patients. In situations where IHA refused to allow certain prescribed medications, or refused to give pre-approval for prescribed medications, CCS Oncology has proactively found separate funding to allow the patients to continue with the course of treatment.

55. CCS Oncology also provides the only community based gynecological oncologists in Western New York. IHA's termination of CCS Oncology physicians, who provide superb care to a significant at-risk group of women in the community, will disrupt the continuity of care, the access to technology and treatments not otherwise offered in the community, and the ability of these patients to find available specialists to treat them.

56. The Physicians regularly appealed the denial of authorizations for tests and procedures to IHA. Despite these appeals, IHA continued to deny the medically necessary care to these cancer patients.

57. In early 2015, CCS Oncology and IHA began negotiations regarding their fee schedule and implementation of a value based reimbursement model.

58. In March of 2015, IHA informed the Physicians that it would be unilaterally amending the fee schedule for all providers associated with CCS Oncology by reducing the fees by 10%.

59. After objections raised by the Physicians, on July 2, 2015 IHA voluntarily rescinded the unilateral 10% fee reduction.

60. In the fall of 2015, officials from IHA again approached CCS Oncology to develop value-based reimbursement models for healthcare services provided by CCS Oncology physicians.

61. The meetings between IHA and CCS Oncology held in the winter of 2015/2016 were unsuccessful, resulting in IPA/WNY informing CCS Oncology that it was unilaterally applying a 20% withhold on all CCS Oncology Physicians with oncology related specialties or taxonomy codes.

62. Independent Health's basis for the 20% withhold was because it claimed that CCS Oncology providers had a total cost care higher than their peers for large volume oncology episodes.

63. IHA claimed that the factual basis for its decision to implement the 20% withhold was reports showing CCS Oncology's cost variation from its peers. Despite numerous requests, Independent Health failed and refused to provide the Physicians with the information supporting its claim. This refusal was in violation of the Participating Physician Agreement, which provides:

IPA/WNY shall make available to each Participating Physician on an annual basis the data and information relied upon to establish the withhold and to determine the return or non-return of all or a portion of the withhold.

64. CCS Oncology appealed the 20% withhold, and timely requested an arbitration proceeding under the Participating Physician Agreement to challenge IHA's implementation of the withhold. A true and accurate copy of the request for arbitration is attached as **Exhibit E**.

65. As a result of CCS Oncology's appeal and demand for arbitration, IHA voluntarily withdrew the implementation of the 20% withhold to avoid going to arbitration.

66. After it withdrew the 20% withhold, IHA did not have any additional negotiations or meetings with CCS Oncology regarding the cost of services provided by the Physicians.

67. On or about June 17, 2016, the CCS Oncology physicians received notice from Independent Health that the Participating Physician Agreements would not be renewed as of December 31, 2016. A true and accurate copy of an example of the "non-renewal" notice is attached hereto as **Exhibit F**.

68. Upon information and belief, one of Independent Health's ostensible basis for "non-renewal" was that it was making efforts to address the sharply rising costs of quality healthcare through negotiating an alternative reimbursement arrangement and that they had been unable to negotiate such an arrangement with CCS Healthcare.

69. Contrary to IHA's claim of "non-renewal," the notice was nothing more than an improper termination of the Physicians as a result of the care provided to Independent Health members.

70. Upon information and belief, the reason for IHA's decision to "non-renew" the Physicians' Participating Provider Agreements is that the Physicians, as set forth above, have consistently been strong advocates for their patients, and have, in the course of that

advocacy, challenged the policies and practices of IHA that the Physicians believe negatively impact the quality of patient care. The Physicians have repeatedly and regularly appealed decisions by the IHA concerning care provided to their patients.

71. The Physicians are not aware of any grounds for IHA to terminate the Participating Provider Agreements. Notably, IHA does not challenge the quality of the care provided by CCS Oncology; it objects to the cost of the care that the Physicians have determined is the best course of treatment for their patients. IHA has not claimed that the Physicians failed to comply with the applicable rules, regulations, and policies; failed to cooperate with utilization review, peer review, record keeping, continuing education or other programs established to promote the quality of care provided or control costs; or failed to abide by the decisions of IHA.

72. Independent Health's wanton, retaliatory, and pretextual decision of non-renewal will force all patients—Medicare and non-Medicare—to terminate the personal, longstanding physician-patient relationship the Physicians worked to build with the community. Patients will be required to change care providers in the course of treatment and seek medical care from a stranger.

73. Many CCS Oncology patients—Medicare and non-Medicare—will be forced to find a new, participating Physician—who themselves may be subject to future retaliatory actions by IHA—during sensitive, emotionally challenging times for both the patients and their families. IHA's actions demonstrate an egregious disrespect towards the cancer-diagnosed public.

74. Upon information and belief, on or around June 17, 2016, IHA issued letters to other participating network physicians notifying them that the Physicians would cease to be an IHA network provider on December 31, 2016. See **Exhibit G**.

75. IHA's letter to other network physicians caused irreparable harm to the CCS Physicians because those network physicians will cease to refer patients to CCS well in advance of the actual termination. The value of anticipatory non-referrals cannot be calculated, but it will, and has, caused substantially irreparable harm to CCS Oncology and the Physicians.

76. Upon information and belief, on or around June 12, 2016, IHA issued letters directly to CCS patients and Medicare patients informing them that the Physicians would no longer be participating in IHA's provider network, inferring that this was a choice made by the physician, and directing current CCS patients to end their relationship with CCS and seek new doctors. A true and accurate copy of an example of the non-renewal notice is attached hereto as **Exhibit H**.

77. IHA's sent a letter to CCS patients and CCS Medicare patients without an opportunity for the CCS Physicians to talk to *their* own patients first.

78. IHA's letter to CCS patients caused irreparable harm to CCS because those patients will end the business and medical relationship with CCS well in advance of the actual termination. The value of anticipatory patient transfers cannot be calculated, but it will cause substantially irreparable harm to CCS Oncology and its Physicians.

79. IHA's letters also caused irreparable harm to CCS Oncology by causing physicians to leave CCS Oncology. Certain of these physicians simply went to other

providers in the area, and upon information and belief are going to continue to participate as providers for IHA.

80. On August 23, 2016, at the demand of the Physicians, IHA held a statutorily required hearing for termination of Medicare providers pursuant to 42 C.F.R. § 422.202(d), which states:

An MA [Medicare Advantage] organization that operates a coordinated care plan or network MSA [Medicare Medical Savings Account] plan providing benefits through contracting providers must meet the following requirements:

(1) Notice to physician. An MA organization that suspends or terminates an agreement under which the physician provides services to MA plan enrollees must give the affected individual written notice of the following:

(i) The reasons for the action, including, if relevant, the standards and profiling data used to evaluate the physician and the numbers and mix of physicians needed by the MA organization.

(ii) The affected physician's right to appeal the action and the process and timing for requesting a hearing.

(2) Composition of hearing panel. The MA organization must ensure that the majority of the hearing panel members are peers of the affected physician.

81. IHA as required to ensure a majority of the hearing panel be peers of the affected physician. *See* CENTER FOR MEDICARE & MEDICAID SERVICES, MEDICARE MANAGED CARE MANUAL, *Chapter 6 – Relationships with Providers* 60.4, (2007), <https://www.cms.gov/Regulations-andGuidance/Guidance/Manuals/downloads/mc86c06.pdf>.

82. The members of the hearing panel included Charles Niles, M.D., a local ophthalmologist; Robert Zielinski, M.D., an oncologist at Buffalo Medical Group; Michael Kuettel, M.D., an oncologist at Roswell Park Cancer Institute; Thom R. Loree, M.D., an oncologist and surgeon at Erie County Medical Center; and David Pfalzer, M.D., a family medicine practitioner.

83. The panel chosen by IHA included three oncologists who are direct competitors with the “non-renewed” Physicians in the marketplace, and who would benefit by the Physicians being removed from the IHA panel.

84. The panel affirmed IHA’s non-renewal of CCS agreements for Medicare. A true and accurate copy of the Hearing Panel’s decision is attached hereto as **Exhibit I**.

FIRST CAUSE OF ACTION
VIOLATION OF 42 U.S.C. § 300gg-5

85. Plaintiffs incorporate, restate and reallege the allegations contained in all of the preceding paragraphs as if they were repeated and restated herein in full.

86. Upon information and belief, the Federal Government expanded its regulatory role in the health care-sector with passage of the Affordable Care Act (ACA or The Act), which mandated that an individual obtain “minimum essential [health insurance] coverage, and failure to obtain such statutorily obligated coverage resulted in a *tax* to the individual. *See* 26 U.S.C. § 5000A.

87. To provide consumers an ability to find § 5000A’s “minimum essential coverage,” state and federal government set up “health benefit exchanges” where a consumer could view various health insurance options and select an insurance best suited to his or her individual and familial needs. *See* 42 U.S.C. § 18001; 42 U.S.C. § 18031 *et. seq.*

88. The ACA did not require individuals to terminate existing coverage and use the exchanges to find health insurance. 42 U.S.C. § 18011(a)(1). However, unintentionally, some individuals lost insurance, which forced them onto the exchanges because the ACA set a new floor for health insurance standards. *See* 42 U.S.C. § 18011(4)(A) (incorporating 42 U.S.C. §§ 30gg-7, 11, 12; § 42 U.S.C §18011(B)(i) (incorporating 42 U.S.C. § 300gg-3).

89. The burden rests with the individual health care recipient, as the eventual taxpayer, to obtain such “minimum essential coverage.” 42 U.S.C. § 18032(a)(1).

90. Although the constitutionally upheld individual mandate of the ACA required health *insurance*, an individual’s choice of health care provider is intrinsically linked to the burden of maintaining minimum health insurance coverage. *See* 42 U.S.C. § 18011(a)(1) (“Nothing in [the ACA] shall be construed to require that an individual terminate coverage under a group health plan or health insurance coverage in which such individual was enrolled on the date of the enactment of this act.”); *see also* 42 U.S.C. § 300gg-19a(a) (“If a group health plan, or a health insurance issuer offering group or individual health insurance coverage, requires or provides for designation by a participant, beneficiary, or enrollee of a participating primary care provider, then the plan or issuer *shall* permit each participant beneficiary, and enrollee to designate any participating primary care provider who is available to accept such an individual.”) (emphasis added).

91. Doctors, once selected by the insured patient, have a duty of care to that patient. The doctor’s duty of care, in circumstances like cancer care, can extend beyond just the patient to those affected by the patient’s health, like family. To this end, physician-patient relationships, especially with cancer care, are personal, long-lasting, and based on emotional trust.

92. The ACA acknowledges the importance of the relationship between patients and health care providers, and the ACA sought to protect this important relationship by prohibiting discrimination in health care by insurance companies in 42 U.S.C. § 300gg-5(a).

93. 42 U.S.C. § 300gg-5(a) states:

A group health plan and a health insurance issuer offering group or individual health insurance coverage shall not discriminate with respect to participation under the plan or coverage against any health care provider who is acting within the scope of that provider’s license or certification under applicable State law.

94. Through delisting a large conglomerate of Western New York's Cancer doctors—CCS Oncology—IHA has improperly discriminated against a CCS, a health care provider, with respect to CCS' participation under IHA's plan in violation of 42 U.S.C. § 300gg-5(a).

SECOND CAUSE OF ACTION
VIOLATION OF 42 C.F.R. § 422.112

95. Plaintiffs incorporate, restate and reallege the allegations contained in all of the preceding paragraphs as if they were repeated and restated herein in full.

96. The Code of Federal Regulations requires Medicare Advantage organizations to ensure access to services for Medicare patients. 42 C.F.R. § 422.112 regarding access to services states:

(a) *Rules for coordinated care plans.* An MA organization that offers an MA coordinated care plan may specify the networks of providers from whom enrollees may obtain services if the MA organization ensures that all covered services, including supplemental services contracted for by (or on behalf of) the Medicare enrollee, are available and accessible under the plan. To accomplish this, the MA organization must meet the following requirements:

(1) *Provider network.*

(i) Maintain and monitor a network of appropriate providers that is supported by written agreements and is sufficient to provide adequate access to covered services to meet the needs of the population served. These providers are typically used in the network as primary care providers (PCPs), specialists, hospitals, skilled nursing facilities, home health agencies, ambulatory clinics, and other providers.

...

(10) *Prevailing patterns of community health care delivery.* MA plans that meet Medicare access and availability requirements through direct contracting network providers must do so consistent with the prevailing community pattern of health care delivery in the areas where the network is being offered.

97. Upon information and belief CCS provides comprehensive cancer services for approximately 30-35% of the cancer diagnosed population of Western New York. Approximately 60% of these services are through Medicare and Medicaid.

98. Upon information and belief CCS provides the only general oncology services in the Fredonia-Dunkirk area of Western New York. In addition, approximately 60% of the oncology care provided in Dunkirk is Medicare or Medicaid.

99. IHA's decision to terminate the Physicians strands patients and overburdens the entire cancer care delivery system of Western New York in violation of 42 C.F.R. §§ 422.112(a)(1), (10).

THIRD CAUSE OF ACTION
VIOLATION OF 42 U.S.C. § 300gg-3

100. Plaintiffs incorporate, restate and reallege the allegations contained in all of the preceding paragraphs as if they were repeated and restated herein in full.

101. Under the Affordable Care Act, IHA must accept every individual and employer seeking health insurance. 42 U.S.C. § 300gg-1.

102. To further health insurance availability, IHA must not exclude any individual from health insurance for a preexisting condition. 42 U.S.C. § 300gg-3.

103. The IHA enrollee patients being seen by CCS Oncology have a preexisting condition because the patient's receipt of cancer services from CCS informed IHA of the diagnosis and subsequent treatment prior to the 2016 enrollment date.

104. Through the termination or "non-renewal" of the Physicians, IHA has effectively dropped CCS Oncology's cancer patients from IHA coverage due to the cancer diagnosis of these patients—the preexisting condition of the CCS patients—in violation of the Affordable

Care Act's Prohibition of preexisting condition exclusions or other discrimination based on health status, 42 U.S.C. § 300gg-3.

FOURTH CAUSE OF ACTION
VIOLATION OF 42 U.S.C. § 300gg-4

105. Plaintiffs incorporate, restate and reallege the allegations contained in all of the preceding paragraphs as if they were repeated and restated herein in full.

106. Under the Affordable Care Act, IHA must not establish rules for denials of coverage based on health status factors, such as the patient's health status, medical condition, and receipt of health care. 42 U.S.C. § 300gg-4.

107. CCS patients received and continue to receive cancer treatment services due to their respective cancer diagnoses.

108. Through delisting of CCS Oncology, IHA has effectively dropped CCS' cancer patients from IHA coverage due to the cancer diagnosis of these patients—the health status and medical conditions—and those patients' subsequent receipt of cancer treatment services in violation of the Affordable Care Act's Prohibition of preexisting condition exclusions or other discrimination based on health status, 42 U.S.C. § 300gg-4.

FIFTH CAUSE OF ACTION
NEW YORK INSURANCE LAW § 3232

109. Plaintiffs incorporate, restate and reallege the allegations contained in all of the preceding paragraphs as if they were repeated and restated herein in full.

110. Under New York Insurance Law § 3232, "[e]very individual health insurance policy and every group or blanket accident and health insurance policy issued or issued for delivery in this state which includes a pre-existing condition provision shall contain in

substance . . . provisions which in the opinion of the superintendent are more favorable to the individuals, members of the group and their eligible dependents.”

111. One such provision, New York Insurance Law § 3232(g) and § 3232(h), prohibits any preexisting condition exclusion pursuant to the Affordable Care Act’s own preexisting exclusion prohibition in 42 U.S.C. § 300gg-3.

112. Through termination or “non-renewal” of the Physicians, IHA has constructively excluded cancer diagnoses patients—patients with a preexisting condition—from receiving and continuing the care the patients sought through CCS Oncology.

113. IHA’s constructive delisting for preexisting condition violates New York Insurance Law §3232.

SIXTH CAUSE OF ACTION
NEW YORK PUBLIC HEALTH LAW § 4406-C

114. Plaintiffs incorporate, restate and reallege the allegations contained in all of the preceding paragraphs as if they were repeated and restated herein in full.

115. Under New York Public Health Law § 4406-c(2), HMOs such as IHA must not, through contract, written policy, or written procedure prohibit or restrict any health care provider—such as CCS Oncology—from disclosing to any subscriber, enrollee, patient, designated representative or, where appropriate, prospective enrollee, any information that such provider deems appropriate regarding: “(a) a condition or a course of treatment with an enrollee including the availability of other therapies, consultations, or tests; or (b) the provisions, terms, or requirements of the health care plan’s products as they relate to the enrollee, where applicable.”

116. Through IHA’s written letters to CCS doctors, other Western New York Physicians, and CCS and Medicare patients, attached hereto as **Exhibits F, G, and H,**

respectively, IHA formed a written policy preventing CCS physicians from disclosing to cancer patients, the prospective or continuing treatments and the coverage of the CCS patient because IHA's written policy placed the insurance coverage for CCS Oncology care into serious doubt in violation of New York Public Health Law § 4406-c(2).

117. Further, IHA's same series of letters constituting a written policy, prohibits and restricts the Physicians' ability to prohibit or restrict "advocating to the health care plan on behalf of the enrollee for approval or coverage of a particular course of treatment or for the provision of health care services" in violation of New York Public Health Law § 4406-c(4).

SEVENTH CAUSE OF ACTION
VIOLATION OF PUBLIC HEALTH LAW § 4406-d

118. Plaintiffs incorporate, restate and reallege the allegations contained in all of the preceding paragraphs as if they were repeated and restated herein in full.

119. Under New York Public Health Law § 4406-d(2)(a), HMOs such as IHA must provide reasons for the proposed contract termination and an opportunity for a review or hearing as hereinafter provided.

120. Under Public Health Law § 4406-d(2)(b), notice of proposed contract termination provided by the health care plan to the health care professional shall include:

- (i) the reasons for the proposed action;
- (ii) notice that the health care professional has the right to request a hearing or review, at the professional's discretion, before a panel appointed by the health care plan;
- (iii) a time limit of not less than thirty days within which a health care professional may request a hearing; and
- (iv) a time limit for a hearing date which must be held within thirty days after the date of receipt of a request for a hearing.

121. IHA ostensibly claimed in their June 17, 2016 termination letter to plaintiff Physicians, **Exhibit F**, that the “non-renewal” is “without cause, [and therefore] not subject to review or appeal.”

122. IHA failed to comply with the notice requirements set forth in § 4406-d(2)(a) or the mandatory guidelines of § 4406-d(2)(b).

123. Without reason for non-renewal given by IHA, CCS has been forced to make a best guess as to a reason for non-renewal.

124. Under Public Health Law § 4406-d(5), HMOs such as IHA are prohibited from refusing to renew a contract solely because a health care provider has:

- (a) advocated on behalf of an enrollee;
- (b) filed a complaint against the health care plan;
- (c) appealed the decision of the health care plan;
- (d) provided information or filed a report pursuant to § 4406-c of this article;
or
- (e) requested a hearing or review pursuant to this section.

125. IHA’s non-renewal of the Participating Provider Agreements, as set forth in its notice, is because the physicians at CCS Oncology advocated on behalf of enrollees to receive the care necessary as determined by their medical expertise.

126. Upon information and belief, and as set forth above, the defendants have refused to renew the IPA/WNY Agreement, IHBC Agreement, IHC Agreement, and IPA/Care Agreement solely because the Physicians consistently and strongly advocated on behalf of their patients pursuant to Public Health Law § 4406-d(5)(a) and, in the course of

that advocacy, requested hearings and reviews of IHA's decisions regarding the quality of and access to patient care.

127. CCS Oncology is unaware of any reason that the defendants may have for refusing to renew the various Participating Provider Agreements with Physicians, other than the Physicians' advocacy on behalf of their patients to provide medically necessary treatment and tests that IHA does not want to pay for.

128. Upon information and belief, the defendants, contrary to Public Health Law § 4406-d(5)(c), refused to renew the IPA/WNY Agreement, IHBC Agreement, IHC Agreement, and IPA/Care Agreement solely because the Physicians appealed the decision by IHA to implement the 20% withhold, and, in the course of those appeals, advocated on behalf of their patients.

129. CCS Oncology is unaware of any reason that the defendants may have for refusing to renew the various Agreements with Physicians, other than the Physicians' appeal of IHA's decision to implement a 20% withhold and request for arbitration proceeding.

130. IHA has been unwilling or unable to provide CCS Oncology with any alternative explanations for the decision not to renew the PPA.

131. Defendants have violated Public Health Law § 4406-d and will cause significant, irreparable harm to the Physicians and the cancer patients that they treat, as IHA patients comprise approximately 40% of the cancer patients seen by the Physicians.

132. IHA, using the non-renewal as a pretext to cover its true reasons to terminate the Physicians, failed to perform the duty enjoined to IHA by Public Health Law § 4406-d.

EIGHTH CAUSE OF ACTION
VIOLATION OF 42 C.F.R. § 422.202

133. Plaintiffs incorporate, restate and reallege the allegations contained in all of the preceding paragraphs as if they were repeated and restated herein in full.

134. Any suspension or termination or non-renewal of a contract with a Medicare provider is governed by 42 C.F.R. § 422.202(d), which states:

An MA [Medicare Advantage] organization that operates a coordinated care plan or network MSA [Medicare Medical Savings Account] plan providing benefits through contracting providers must meet the following requirements:

(1) Notice to physician. An MA organization that suspends or terminates an agreement under which the physician provides services to MA plan enrollees must give the affected individual written notice of the following:

(i) The reasons for the action, including, if relevant, the standards and profiling data used to evaluate the physician and the numbers and mix of physicians needed by the MA organization.

(ii) The affected physician's right to appeal the action and the process and timing for requesting a hearing.

(2) Composition of hearing panel. The MA organization must ensure that the majority of the hearing panel members are peers of the affected physician.

(3) Notice to licensing or disciplinary bodies. An MA organization that suspends or terminates a contract with a physician because of deficiencies in the quality of care must give written notice of that action to licensing or disciplinary bodies or to other appropriate authorities.

(4) Timeframes. An MA organization and a contracting provider must provide at least 60 days written notice to each other before terminating the contract without cause.

135. An appeal of non-renewal that involved Medicare patients is an important right of CCS and not a burden on IHA as set forth in 64 Fed. Reg. 7,975, 7,977 (Feb. 17, 1999) (to be codified at 42 C.F.R. pt. 422).

136. IHA failed to comply with the composition of hearing panel requirements of 42 C.F.R. § 422.202(d)(2).

137. IHA composed the hearing panel with three oncologists working at facilities in direct competition with CCS Oncology.

138. The bias of this panel undermines IHA's statutory duty to meet the requirements of a Medicare non-renewal hearing set forth in 42 C.F.R. § 422.202(d).

NINTH CAUSE OF ACTION
VIOLATION OF NEW YORK GENERAL BUSINESS LAW § 349

139. Plaintiffs incorporate, restate and reallege the allegations contained in all of the preceding paragraphs as if they were repeated and restated herein in full.

140. New York General Business Law § 349(a) states: "Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful."

141. On or about June 22, 2016 IHA notified patients of CCS that patients of CCS with IHA insurance coverage could no longer receive treatment from CCS oncologists beginning January 1, 2017.

142. IHA's act materially mislead CCS Oncology patients by informing the patients contemporaneously to those patients' doctors at CCS Oncology, which prevented CCS Oncology from discussing this potentially serious situation with patients and correcting any misinformation or miscommunication.

143. CCS Oncology suffered injury because IHA's deceptive acts induced patients to terminate the physician-patient relationship in the middle of care for fear of lack of insurance coverage.

144. The same deception also harms the reputation of CCS Oncology because IHA disclosed to CCS Oncology patients that CCS Oncology would lose business with one of the area's leading insurers.

145. The deception also harms CCS Oncology patients because the sudden misinformation leads patients to seek alternative treatment in the middle of care.

146. IHA's materially misleading, deceptive act regarding CCS Oncology patients demonstrates an egregious disregard for the cancer-diagnosed public that receives treatment at CCS Oncology.

TENTH CAUSE OF ACTION
BREACH OF CONTRACT

147. Plaintiffs incorporate, restate and reallege the allegations contained in all of the preceding paragraphs as if they were repeated and restated herein in full.

148. Pursuant to the IPA/WNY Agreement, IPA/WNY "agree to comply with the Managed Care Reform Act of 1996 (Chapter 705 of the Laws of the State of New York 1996) and all amendments thereto, all applicable requirements of the Americans with Disabilities Act and the requirements of 42 CFR Part 434, if applicable.

149. The IHBC, IHC, and IPA/Care Agreements contain similar provisions.

150. Public Health Law § 4406-d codified the Managed Care Reform Act of 1996.

151. As set forth above, IHA has violated Public Health Law § 4406-d and 42 C.F.R. § 422.202 and is therefore in breach of the IPA/WNY Agreement, the IPA/Care Agreement, and the IHC Agreement, and IHBC Agreement. As set forth above, defendants have, upon information and belief, pretextually refused to renew the Agreements based on the Physicians advocacy on behalf of the patients and the request for arbitration.

152. IHA's breach of contract demonstrates an egregious disregard for the cancer-diagnosed public that receives treatment at CCS Oncology.

ELEVENTH CAUSE OF ACTION
BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING

153. Plaintiffs incorporate, restate and reallege the allegations contained in all of the preceding paragraphs as if they were repeated and restated herein in full.

154. Implicit to the IPA/WNY Agreement, the IPA-Care Agreement, the IHA Agreement, and the IHBC Agreement is a covenant of good faith and fair dealing.

155. IHA's actions in non-renewing the various Agreements with the Physicians is a pretext to the real reason for termination, which is based on the Physicians' advocacy on behalf of their patients as well as CCS' appeal against IHA's unsupported determination that the care provided by the Physicians is more expensive than their peers.

156. IHA's actions in terminating and/or non-renewing violates the covenant of good faith and fair dealing implicit to the Agreements.

157. IHA's violation of the covenant of good faith and fair dealing implicit to the Agreements demonstrates an egregious disregard for the cancer-diagnosed public that receives treatment at CCS Oncology.

TWELFTH CAUSE OF ACTION
TORTIOUS INTERFERENCE WITH A BUSINESS RELATIONSHIP

158. Plaintiffs incorporate, restate and reallege the allegations contained in all of the preceding paragraphs as if they were repeated and restated herein in full.

159. CCS Oncology, as group of medical professionals, has a confidential business relationship with its patients.

160. Upon information and belief, IHA directly communicated via a letter on or about June 22, 2016, with these patients regarding their relationship with the Physicians. A true and accurate copy of an example of the non-renewal notice is attached hereto as **Exhibit H**.

161. IHA directly communicated with these patients without warning to CCS Oncology or without opportunity for CCS Oncology to communicate with its patients first.

162. IHA's direct letter communication concluded that the relationship between CCS Oncology and its patients would end.

163. As stated above, under Public Health Law § 4406-d(2)(a), HMOs such as IHA must provide reasons for the proposed contract termination as set forth in Public Health law § 4406-d(2)(b) and an opportunity for a review or hearing as hereinafter provided.

164. IHA ostensibly claimed in their June 17, 2016 termination letter to the Physicians that the non-renewal is "without cause, [and therefore] not subject to review or appeal."

165. IHA did not afford CCS Oncology proper notice or opportunity or provide any fair process to appeal this possible termination before sending these direct letters as described in Public Health Law § 4406-d.

166. IHA's direct communications, the letter to CCS Physicians and patients, improperly interfered with the patient-physician relationship of CCS and its patients.

167. IHA's direct letter communication also went to Medicare patients of CCS.

168. The IHA letter went to CCS Medicare patients before CCS was given proper notice or an opportunity to either communicate with its patients or appeal the IHA decision.

169. As stated above, under 42 C.F.R. § 422.202(d), all notices to participating physicians must include reasons for the termination, including relevant standards used by IHA to make a non-renewal decision pursuant to 42 C.F.R. § 422.202(d)(1)(i).

170. IHA ostensibly claimed in their June 17, 2016 termination letter to plaintiff Physicians that the non-renewal is “without cause.”

171. IHA’s direct communications improperly interfered with the patient-physician relationship of CCS Oncology and its Medicare patients.

172. IHA’s acted maliciously, dishonestly, unfairly, and improperly through these letters.

173. As stated above, IHA’s failure to provide proper notice and reasons for termination under both Public Health § 4406-d and 42 C.F.R. § 422.202 resulted in an improper interference with the confidential business and medical relationship between CCS Physicians and its patients and Medicare patients.

174. The Physicians have sustained damage as a result of IHA’s interference with the patients.

175. IHA’s interference with the CCS Oncology patients demonstrates an egregious disregard for the cancer-diagnosed public that receives treatment at CCS Oncology.

THIRTEENTH CAUSE OF ACTION
TORTIOUS INTERFERENCE WITH CONTRACT

176. Plaintiffs incorporate, restate and reallege the allegations contained in all of the preceding paragraphs as if they were repeated and restated herein in full.

177. The Physicians had an existing contract with its cancer patients.

178. IHA was fully aware of this contract.

179. IHA intentionally induced an estimated 2,000 oncology patients to breach that contract by terminating their CCS Physician.

180. IHA used wrongful means to induce the breach of contract between CCS and its patients because IHA sent an unannounced letter to the oncology patients of CCS requiring them to change doctors. About 600 of these letter-notified cancer patients were in the middle of treatment when told they needed to change providers.

181. CCS patients would not have breached that contract if it had not been for IHA's conduct.

182. The Physicians sustained damages as a result of the patients' involuntary termination of the contract.

FOURTEENTH CAUSE OF ACTION
TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS

183. Plaintiffs incorporate, restate and reallege the allegations contained in all of the preceding paragraphs as if they were repeated and restated herein in full.

184. CCS had the opportunity to continue to provide quality cancer treatment to numerous cancer patients across Western New York.

185. IHA was fully aware of this prospective economic relation.

186. IHA intentionally interfered with that prospective patient-physician relationship.

187. IHA used wrongful means to intentionally interfere with the prospective economic relationship with patients through various letters sent to referring physicians in Western New York and current patients of CCS Oncology.

188. Without IHA's interference, the Physicians would have been free to potentially treat numerous cancer patients in need of cancer treatment services.

189. As a result of IHA's intentional interference by wrongful means of a prospective economic relationship between the Physicians and cancer patients of Western New York, plaintiffs have sustained damages.

FIFTHTEENTH CAUSE OF ACTION
INJUNCTION

190. Plaintiffs incorporate, restate and reallege the allegations contained in all of the preceding paragraphs as if they were repeated and restated herein in full.

191. Defendants have violated, and upon information and belief, intend to continue violating, Public Health Law §4406-d and the Participating Provider Agreements.

192. Unless Defendants are enjoined from such actions, the Plaintiffs will suffer irreparable harm, including damage to their relationships with IHA enrollees and referring physicians.

193. An award of monetary damages will not adequately compensate the Plaintiffs for such irreparable harm.

194. Plaintiff Physicians and CCS Oncology request, and are entitled to, preliminary and permanent injunctions compelling IHA to comply with the Participating Provider Agreements, which prohibit IHA from refusing to renew the agreements in violation of Public Health Law §4406-d, take all steps necessary to reverse the actions taken by IHA to deprive the Physicians of their Participating Provider status, and inform all patients and physicians notified by IHA concerning the "non-renewal" of the Participating Provider Agreements that the Physicians have retained their Participating Provider status, and that IHA erred in the prior information provided to those patients and physicians.


WHEREFORE, CCS Oncology and the Physicians demand judgment against the defendants revoking and rescinding the notice of termination to each of the individual physicians; a preliminary and permanent injunction compelling defendants to take any and all steps necessary to reverse the actions taken by defendants to deprive plaintiffs of their participating physician status, and inform, in writing, any and all patients and physicians previously contacted by defendants concerning the “non-renewal” of plaintiff’s IPA/WNY Agreement, the IPA/Care Agreement, and the IHC Agreement, and IHBC Agreement, that the plaintiff Physicians have retained status as participating providers, and that defendants erred in informing those patients and Medicare patients and physicians that the non-renewal of the defendant Physicians was to occur or had occurred; an order declaring defendants’ non-renewal of plaintiff’s IPA/WNY Agreement, the IPA/Care Agreement, and the IHC Agreement, and IHBC Agreement violates: 42 U.S.C. § 300gg-5 for discrimination against a health care provider, 42 C.F.R. §§ 422.112(a)(1), (10) for limiting access to health care services, 42 U.S.C. § 300gg-3 for discrimination against patients with a preexisting condition, 42 U.S.C. § 300gg-4 for discrimination against patients based on health status, New York Insurance Law § 3232 for discrimination against patients with a preexisting condition, New York Public Health Law § 4406-c mandate that IHA restrict any written policy from interfering with Physician’s objective communications to patients and patient advocacy, the notice requirements of New York Public Health Law § 4406-d(2)(a) and § 4406-d(2)(b), the non-renewal prohibitions of Public Health Law § 4406-d(5)(a) or § 4406-d(5)(c), the Medicare non-renewal or termination hearing requirements of 42 C.F.R § 422.202(d), and New York General Business Law § 349 for deceptive business practices; and the assessment of

punitive damages against Independent Health; as well as all costs and expenses as well as other damages as permitted by the Court.

DATED: November 21, 2016
Buffalo, New York

COLUCCI & GALLAHER, P.C.

By: _____

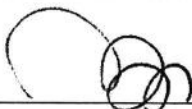


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VERIFICATION

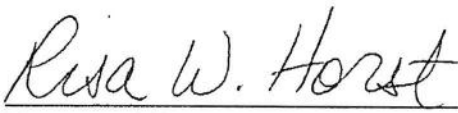
STATE OF NEW YORK)
) ss:
COUNTY OF ERIE)

W. Sam Yi, M.D., being duly sworn, deposes and says that he is a plaintiff herein and the president of CCS Medical, PLLC; that deponent has read the foregoing Verified Complaint and knows the contents thereof and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters, deponent believes them to be true.



W. Sam Yi, M.D.

Sworn to before me this 18 day
of November, 2016.



Notary Public

RISA W HORST
Notary Public, State of New York
No. 01HO6290180
Qualified in Erie County
Commission Expires 10/07/2017