

Dissenting Statement of Commissioner J. Thomas Rosch
In the Matter of M. Catherine Higgins, File No. 051 0252

Today's events represent a sad conclusion to an unnecessarily sordid tale. Four years ago, in October 2005, the Commission opened an investigation into whether the Boulder Valley Individual Practice Association ("Boulder Valley" or "BVIPA") and Mary Catherine Higgins (Boulder Valley's Executive Director) violated the antitrust laws by allowing competing physicians to jointly negotiate terms with payors. Boulder Valley ultimately agreed to enter into a consent decree. That consent decree, however, was not just a logical successor to other finalized decrees the Commission has entered against Individual Practice Associations ("IPAs") composed of competing physicians who have jointly negotiated rates with payors. The underlying conduct in those cases was horizontal price-fixing – which is

consent, Anthem Blue Cross Blue Shield complained that “the terms of the Consent Order may be interpreted to allow individuals associated with . . . BVIPA” to continue to attempt to facilitate collusive pricing.³ Third, following those complaints and conversations with Anthem, staff notified Ms. Higgins that it was evaluating whether to add her to the *Boulder Valley* complaint or name her separately. Fourth, Ms. Higgins then separately met with the Commissioners (with the exception of the undersigned) in an effort to persuade them not to pursue her individually. Fifth, following those meetings, staff offered Ms. Higgins a consent decree that restricts Ms. Higgins’s ability to participate in a pure “messenger system” in obtaining rates for those physicians that Boulder Valley represents. Sixth, Ms. Higgins rejected that consent decree, but rather than litigate, the Commission has since agree to a consent decree that (unlike the Commission’s consent decree with Boulder Valley) (1) restricts Ms. Higgins to a