



Presidential Executive Order 14036

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Narrative abstract: Open and fair commentary on the intrigues of managed care comes with a cost. Following one well documented report Chiropractor and author JC Smith felt the wrath from a major provider which revoked his credentials thus denying him access to 75% of his patients.

In this commentary Smith examines Presidential Executive Order 14036 which is meant to ‘to enforce the antitrust laws to combat the excessive concentration of industry, the abuses of market power, and the harmful effects of monopoly and monopsony, especially in healthcare markets’.

Perhaps this is an optimistic expectation. Smith explains the issues associated with this matter in this paper which is based on his letter to the Biden White House.

Indexing terms: Chiropractic; Biden Executive Order; competition; market share; managed care

Introduction

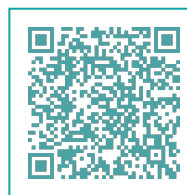
On July 9, 2021, President Biden’s Executive Order 14036, *Promoting Competition in the American Economy*, directed the FTC and DOJ to ‘enforce antitrust laws to combat’ the anticompetitive markets including healthcare:

‘This order affirms that it is the policy of my Administration to enforce the antitrust laws to combat the excessive concentration of industry, the abuses of market power, and the harmful effects of monopoly and monopsony, especially in healthcare markets ...

This EO also stated ‘A fair, open, and competitive marketplace has long been a cornerstone of the American economy’, yet we chiropractors see no fair, open, or robust competition in the lucrative spine care marketplace estimated at \$134.5 billion in 2016, more than cancer, heart disease, or diabetes among 154 conditions. (1)

Attorney-writer Steven Brill put it best in his TIME cover article ‘*Bitter Pill: Why Medical Bills Are Killing Us*’, that medical care is badly broken due to the lack of free enterprise:

... Chiropractic’s win in the Wilk Trial was pyrrhic; today we have no effective pushback by chiropractic state associations, chiropractic boards, nor state agencies. We cannot afford to fight the stable of attorneys defending the big players in managed care ...’



1. Dieleman JL et al. US Health Care Spending by Payer and Health Condition, 1996-2016

'We spend \$85.9 billion trying to treat back pain, which is as much as we spend on all the country's state, city, county, and town police forces. And experts say that as much as half of that is unnecessary.' (2)

This medical goldmine is protected by the *American Medical Association* whose antitrust tactics to 'contain and eliminate' (3) the chiropractic profession were revealed in federal court at the [WILK V. AMERICAN MEDICAL ASS'N, \(N.D.ILL. 1987\)](#) antitrust lawsuit. The court found the AMA liable for restraint of trade and spoke of the [lingering effects](#) of the anticompetitive damages that have never been enforced.

Reminiscent of the [Dominion defamation lawsuit against FOX News](#), the AMA's boycott and well known malicious defamation of chiropractors motivated the District Court Judge Susan Getzendanner to remark:

'In addition to labelling all chiropractors as unscientific cultists and depriving chiropractors of association with medical physicians, injury to reputation was assured by the AMA's name-calling practice that described chiropractors as "rabid dogs and killers" and obviously injured reputations.'

Nonetheless, the AMA's attorney Kirk Johnson predicted '*... the Wilk decision will have little or no impact on patients and their physicians.*' (4) He was correct.

Just as the Big Oil industry has no interest to see Renewable Energy prosper, nor does the Spine Cartel (5) want to see its 90% share of the \$134.5 billion market (6) encroached by the chiropractic profession whose market size was less than 10% valued at \$12.26 billion in 2017, despite our [superior clinical results](#). (7)

Indeed, the chiropractic David facing the medical Goliath is a daunting task, similar to the call before Congress to investigate corporate behemoths Amazon, Apple, Facebook, and Google that engaged in anticompetitive tactics with start-ups. (8)

Hopefully the DOJ or FTC will investigate the same monopolization issue in medical spine care considering the back pain market in 2016 at \$134.5 billion (9) was larger than Facebook at \$113.6 billion in 2022. If there were a free market in spine care where the '*best mousetrap*' prevailed and patients had [equal coverage and access to nondrug therapies](#), the present market shares would be greatly changed.

Instead, DCs still face unfair competition 36 years after [Wilk v. AMA](#) as I found in [my whistleblower investigations](#) where chiropractors were excluded or restricted whether in private industry [state workers' compensation](#) or federal government-controlled programs like Medicare/

2. Steven Brill, *America's Bitter Pill*; Money, politics, backroom deals, and the fight to fix our broken healthcare system, Random House, NY, 2015

3. Evidence at the [Wilk v. AMA](#) antitrust trial

4. Bryan Miller, [Chiropractors vs. AMA](#), Chicago Reader, June 27, 1991

5. Comprised of spine/orthopedic surgeons, hospital administrators, device manufacturers, Big Pharma, imaging centers, and pain management clinics

6. In 2016, among the 154 conditions, low back and neck pain had the highest amount of health care spending with an estimated \$134.5 billion in spending. Other musculoskeletal disorders accounted for the second highest amount of health care spending (estimated at \$129.8 billion). JL Dieleman, et al., [US Health Care Spending by Payer and Health Condition, 1996-2016](#), JAMA 2020 Mar 3;323(9):863-884.

7. [U.S. Chiropractic Market Size, Share & Trends Analysis Report](#) By Entity Type (Solo DC, DC Group), By Location Spread (West, South, Midwest, East), Vendor Landscape, And Segment Forecasts, 2018 - 2025

8. [House investigation faults Amazon, Apple, Facebook and Google for engaging in anti-competitive monopoly tactics](#)

9. Dieleman JL et al. [US Health Care Spending by Payer and Health Condition, 1996-2016](#)

Medicaid, military health programs such as [TRICARE/FECA](#), or the [DVA](#). There is still no fair and open marketplace in any of these programs despite the studies showing [chiropractic care is the best buy with the best results](#).

This should be the first target to revisit by the Biden Administration to *'enforce the antitrust laws to combat...the harmful effects of monopoly.'* The second target should be the *'harmful effects of monopsony in healthcare.'*

Spine scandal

'Spinal medicine in the US is a poster child for inefficient spine care' (10) according to editor Mark Schoene: (11)

'The US medical system is treating back and neck pain more frequently, more intensively, and much more expensively than in the past. Yet despite the outrageous sums of money directed at these symptoms, there is no sign that medicine is making progress in their management.

'Back and neck pain are leading causes of work and life disability. They have resulted in the deaths of hundreds of thousands of people, directly and indirectly, through the opioid crisis. And they have led US society to waste billions of dollars on ineffective and/or marginally effective treatments.' (12)

For years patients have been victimised in this uniquely American spine scandal. According [The Lancet](#) review, *'Low back pain: a call for action,'* patients are treated with *'outdated models of care'* based on *'widespread misconceptions'*:

- ▶ addictive opioid painkillers shown to be *'no better than NSAIDs'* (13)
- ▶ *'underwhelming'* epidural steroid injections (14)
- ▶ spinal cord stimulators *'raising more doubt than substance'* (15)
- ▶ [expensive spine surgeries](#) often [unnecessary](#) (16) and [ineffective](#) based on the [debunked 'bad disk' diagnosis](#).

The exorbitant rate of addictive prescription opioid painkillers led the NIH to declare a national health alert that the *'United States faces a Double Crisis: opioid addiction and unrelieved pain'* mainly from chronic neck and low back pain that are the leading reasons for prescription

10. The BACKPage editorial, vol. 27, No. 11, November 2012.

11. [Editor of The BackLetter](#), an international spine journal published by the Department of Orthopaedic Surgery, Georgetown University

12. The Back Letter: ['May 2020 - Volume 35 - Issue 5 - p 49-59'](#)

13. Department of the Veterans Administration researcher Dr. Erin Krebs, ['Opioids are no better than NSAIDs for chronic back or arthritis pain'](#)

14. Epidural steroid injections also proven to be 'underwhelming' in a [Major Review Finds Scant Evidence to Support Spinal Injections as Treatments for Back and Leg Pain](#), sponsored by the U.S. Agency for Healthcare Research and Quality (AHRQ).

15. 'Renewed doubt about spinal cord stimulation for chronic pain—as its popularity soars'. The BACKLetter, vol.37, No. 12, December 2022.

16. According to orthopedist KS Dhillon, MD, the need for spine fusions are limited to the 'Red Flags', cancer, fractures, infections, severe scoliosis, spinal deformities, cauda equina, or those neurological cases unresponsive to conservative care, that may be as little as [5% to 7% of all LBP cases](#), suggesting the number of unnecessary spine surgeries is much larger than most people realize and much more than spine surgeons will admit publicly.

opioid painkillers. (17) Inexplicably this alert fails to notify the public (18) that [chiropractic care reduces both opioid consumption and spine surgery](#) and, overall, is more [efficacious than medical spine care](#) for the majority of back pain cases.

Cookbook care

Dr. David Sackett, MD, attributed as the Father of Evidence-based Medicine, foresaw the *'harmful effects of monopoly and monopsony'* (19) when he denounced the *'slavish, cookbook approaches'* in [Evidence-based medicine: what it is and what it isn't](#):

'Evidence based medicine is not "cookbook" medicine... it cannot result in slavish, cookbook approaches to individual patient care.'

A perpetrator of *'slavish, cookbook'* spine care is *American Specialty Health Inc. (ASH)*, (20) a monopsony that manages chiropractic plans for 150+ PPOs covering 55 million people (21) that has been found liable in [three class action lawsuits](#) in NJ, Penn, and SoCal.

ASH's modus operandi persists unfazed because court penalties were inconsequential with de minimis fines, no ASH executives went to jail, and ASH continued to exploit patients and providers with *'brazen embezzlement and conversion schemes.'* (22)

[Testimony to Health & Human Services](#) by an ASH executive admitted its *'cookbook'* routinely cuts patient benefits from 40 contracted visits to a very modest 6-7 encounters under the guise of the [loophole of medical necessity](#):

'A medical necessity governed chiropractic benefit could allow for coverage of 40 or more chiropractic encounters per benefit year with the resulting population average utilization being very modest 6-7 encounters under an evidence-based, medical necessity reviewed benefit plan.'

ASH's cookbook also denies standard spinal x-rays despite every chiropractic college considering radiology a fundamental essential of examination. The arbitrary restraint of office visits and [denial of spinal imaging](#) explains how ASH doubled its revenue in four years when it boasted a 99% overall revenue growth from \$255.90 million in 2014 to \$509.89 million in 2018. (23)

ASH also boasted its average executive compensation is \$229,807 a year and its most compensated executives make \$700,000 or more. Considering the average salary of spine surgeons is [\\$710,055 per year](#), the highest in the medical profession, does it sound reasonable that an insurance administrator should make as much as the highest paid surgeon? Indeed, a perk of managed care.

17. Denise Boudreau, PhD, Michael Von Korff, ScD, Carolyn M. Rutter, PhD, Kathleen Saunders, G. Thomas Ray, Mark D. Sullivan, MD, PhD, Cynthia Campbell, PhD, Joseph O. Merrill, MD, MPH, Michael J. Silverberg, PhD, MPH, Caleb Banta-Green, and Constance Weisner, DrPH, MSW. 'Trends in De-facto Long-term Opioid Therapy for Chronic Non-Cancer Pain.' *Pharmacoepidemiol Drug Saf.* 2009 December;18(12):1166-75. DOI10.1002/pds.1833.

18. The [Doctrine of Informed Consent](#) mandates patients be told of all 'practical alternatives' including chiropractic care.

19. According to Senator Amy Klobuchar's book, *Antitrust*: "A monopsony is a new reality in America's economy" that allows a firm "to force suppliers of goods or services to cut their prices to unreasonably low levels, resulting in reduced business opportunities for suppliers and reduced availability and quality of products and services for consumers."

20. A good synopsis of the questionable practices by ASH was written by attorney Brian Brijbag in [Understanding How American Specialty Health Impacts Your Florida Blue Chiropractic Benefits](#) as a warning to prospective patients.

21. [American Specialty Health National Accounts](#).

22. [Cigna Sued for RICO Violations, "Brazen Embezzlement and Conversion Scheme"](#) -Health Plan Litigation Tsunami: Part 2, 03 Jan 2020

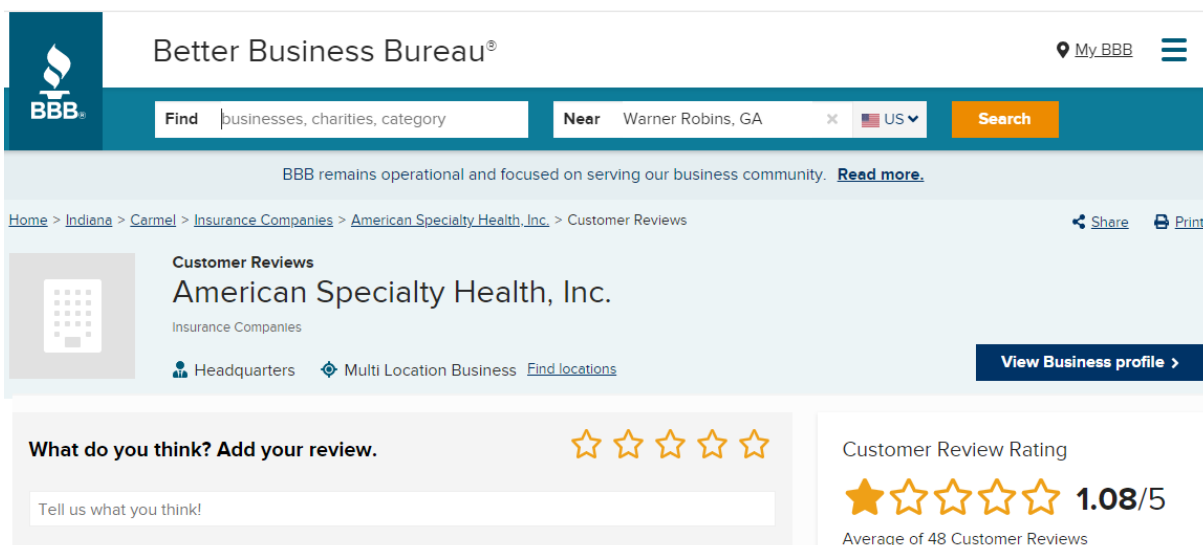
23. [American Specialty Health National Accounts](#).

The 'abuses of market power' mentioned by EO 14036 was evident with ASH as the sole gatekeeper for patient access to chiropractors in all statewide and federal BCBS programs in Georgia, no other credentialing service is available. This dictatorial power forces providers to work without labor agreements or representation by any labor union, and without pay increases. When I published my whistleblower complaint, [ASH CHOKEHOLD](#), I felt the wrath of [ASH retribution](#) by its revoking of my credentials denying me access to 75% of my patients.

There is no effective pushback by chiropractic state associations, chiropractic boards, nor state agencies that cannot afford to fight ASH's stable of attorneys. (24)

There is no escaping that ASH has everyone over a barrel with its 'slavish' control of our profession.

It is little wonder why disgruntled patients have posted complaints at [BBB](#) and [YELP](#) expressing their low opinions of the ASH brand of healthcare, only 1.08 on a scale of 5.



The screenshot shows the BBB website interface. At the top, there is a search bar with the text "Find businesses, charities, category" and a "Near" dropdown set to "Warner Robins, GA". Below the search bar, there is a navigation breadcrumb: "Home > Indiana > Carmel > Insurance Companies > American Specialty Health, Inc. > Customer Reviews". The main content area features a "Customer Reviews" section for "American Specialty Health, Inc." with a "View Business profile" button. A review section prompts users to "What do you think? Add your review." and shows a "Customer Review Rating" of 1.08/5, which is the average of 48 customer reviews. The rating is represented by five stars, with the first star filled and the others empty.

I urge the Biden White House, the DOJ, and the FTC 'to enforce the antitrust laws to combat' the exploitation of American healthcare consumers seeking spinal care services.

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24. My state and national associations are afraid to help me because ASH draws out litigation with appeal upon appeals and then countersues to discourage other states.