

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

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UNITED STATES OF AMERICA,)	
1401 H Street, N.W.)	
Suite 4000)	
Washington, D.C. 20530)	
)	
Plaintiff,)	
)	
v.)	
)	
MOUNTAIN HEALTH CARE, P.A.)	Civil No.: 1:02CV288-T
2 Hendersonville Road)	
Suite C)	Filed: 12/13/02
Asheville, NC 28803)	
)	
Defendant.)	
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COMPLAINT

The United States of America, by its attorneys and acting under the direction of the Attorney General of the United States, brings this civil antitrust action to obtain equitable relief against Defendant Mountain Health Care, P.A. (“Mountain Health Care”). The United States alleges as follows:

I.

INTRODUCTION

1. In coordination with the more than 1,200 North Carolina physicians who are its participating physicians, Mountain Health Care organized and directed an effort to develop a uniform fee schedule to be used to negotiate and contract for fees for physician reimbursement from a wide range of managed care companies, health insurance companies, third-party

administrators and employers (hereinafter collectively referred to as “managed care purchasers”) who provide health care benefits directly to their employees and enrollees. Through Mountain Health Care’s use of that uniform fee schedule, its participating physicians communicated, negotiated, and contracted with many managed care purchasers. These collective negotiations, communications and contracts unreasonably restrained competition among the independent physicians and their various medical practice groups that participate in Mountain Health Care; and, as a result, managed care purchasers incurred artificially higher physician reimbursement fees. The United States, through this suit, asks this court to direct defendant Mountain Health Care to disband promptly, before further injury to consumers in North Carolina and elsewhere occurs.

II.

DEFENDANT

2. Mountain Health Care is a professional corporation incorporated under the laws of North Carolina, and is entirely owned by its participating physicians, although not all participating physicians are owners. There are more than 1,200 participating physicians and they practice in the Western North Carolina area, consisting, in whole or in part, of Buncombe, Burke, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, and Yancey counties. Mountain Health Care’s principal, and only, office is located at 2 Hendersonville Road, Asheville, North Carolina 28803. Mountain Health Care and its participating physicians transact business and offer health care services to customers located in the Western District of North Carolina.

III.

JURISDICTION AND VENUE

3. The United States brings this action to prevent and restrain Defendant's continuing violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. § 4 and 28 U.S.C. §§ 1331, 1337 and 1345.

4. Mountain Health Care transacts business and has committed the unlawful acts at issue in North Carolina; and, its participating physicians are located in North Carolina. Consequently, this Court has jurisdiction over Defendant, and venue is proper in this District pursuant to 28 U.S.C. § 1391(c) and 15 U.S.C. § 22.

V.

EFFECTS ON INTERSTATE COMMERCE

5. Mountain Health Care contracts to provide health care services with businesses located outside North Carolina. These businesses remit substantial payments to Mountain Health Care's physicians in North Carolina. Mountain Health Care is engaged in, and its activities substantially affect, interstate commerce.

VI.

BACKGROUND INFORMATION

6. Physicians frequently contract with managed care purchasers. These contracts establish the terms and conditions, including price, under which physicians will render care to the enrollees of managed care purchasers. In negotiations with managed care purchasers, physicians frequently agree to charge rates lower than their customary rates, in order to gain

access to the managed care purchaser's enrollees. As a result of this lower rate, such contracts often lower the managed care purchasers' cost, and therefore lower the cost of health care for their enrollees.

7. Absent an agreement among otherwise competing physicians or medical practices, each independent physician, medical partnership or professional corporation independently decides whether or not to enter into a contract with a particular managed care purchaser, and independently negotiates the terms, including price, of such an agreement.

VII.

DEFENDANT'S UNLAWFUL ACTIVITIES

8. Mountain Health Care was incorporated on August 22, 1994. A key objective of the joint venture was to develop a common fee schedule and represent its participating physicians in negotiations with managed care purchasers. Since its inception, Mountain Health Care has been comprised of the vast majority of private practice physicians in the greater Asheville area, representing virtually every medical specialty, including the bulk of physicians with admitting privileges at Mission St. Joseph's Hospital, the only hospital available to the general public in Asheville, North Carolina and surrounding Buncombe County. Mountain Health Care provides managed care purchasers and their enrollees with immediate access to substantially all of the physicians in Asheville and the surrounding counties.

9. Mountain Health Care's participating physicians agreed to have Mountain Health Care negotiate with managed care purchasers on their behalf. To facilitate such negotiations, Mountain Health Care and its participating physicians developed a uniform fee schedule for use in its dealing with managed care purchasers. The fee schedule was developed, in part, by

blending the rates of multiple physician practices. Mountain Health Care adopted a uniform price schedule that applied to almost every physician in Asheville and the surrounding counties.

10. Mountain Health Care used the uniform fee schedule in negotiations on behalf of its participating physicians with managed care purchasers, and entered into contracts with them under the fee schedule. By using this uniform fee schedule Mountain Health Care set the reimbursement rates its participating physicians would receive from most self-insured employers, third party administrators, and smaller health insurance companies. For managed care purchasers who purchase a physician network through a Mountain Health Care fee schedule, each competing physician is paid the same amount for the same service. Mountain Health Care continued to use such a uniform fee schedule into 2002.

11. Mountain Health Care has not clinically or financially integrated its physicians to create efficiencies sufficient to justify the use of a uniform fee schedule in joint negotiations and contracts with managed care purchasers.

VIII.

VIOLATION ALLEGED

12. Beginning at least as early as August 1994, and continuing to date, Defendant and its participating physicians have participated in an agreement which has unreasonably restrained interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. This offense is likely to continue and recur unless the relief requested is granted.

13. The agreement consisted of an understanding and concert of action among Defendant and its participating physicians that Mountain Health Care would develop and adhere to a uniform fee schedule to use in negotiations with managed care purchasers, and that

Mountain Health Care would represent its participating physicians exclusively in contract negotiations with certain managed care purchasers.

14. The use of this uniform fee schedule has resulted in increased physician reimbursement fees to managed care purchasers throughout Western North Carolina. Physicians and practice groups that normally would have competed with each other set the same price for their services. Thus, Mountain Health Care is operating as a price-setting organization.

15. In furtherance of this agreement, Defendant and its participating physicians and employees engaged in the following conduct:

- (a) Incorporated Mountain Health Care on August 22, 1994;
- (b) Developed and implemented a uniform fee schedule and used that fee schedule in negotiations on behalf of its participating physicians with managed care purchasers; and
- (c) Entered into contracts with managed care purchasers pursuant to that uniform fee schedule.

IX.

EFFECTS

16. Mountain Health Care's actions have restrained price and other forms of competition between physicians in Western North Carolina and thereby harmed consumers, such as managed care purchasers, employers and their enrollees, by increasing prices for physician services.

17. This agreement has had the following effects, among others:
- (a) Price competition among the participating physicians has been unreasonably restrained;

(b) Managed care purchasers, and their enrollees and employees in Western North Carolina have been denied the benefits of free and open competition in the sale of physician services to managed care purchasers; and

(c) Managed care purchasers, and their enrollees and employees in Western North Carolina have paid higher prices for physician services sold through managed care purchasers than they would have paid in the absence of this restraint of trade.

X.

REQUEST FOR RELIEF

18. Plaintiff requests that the Court:

(a) Declare the actions of Mountain Health Care to be a violation of Section One of the Sherman Act, 15 U.S.C. § 1; and

(b) Order the prompt dissolution of Mountain Health Care.

DATED: DECEMBER 13, 2002

FOR PLAINTIFF
UNITED STATES OF AMERICA:

_____/s/_____
CONSTANCE K. ROBINSON
Director of Operations

_____/s/_____
MARK BOTTI
Chief, Litigation I

_____/s/_____
WEEUN WANG
STEVEN BRODSKY
DAVID KELLY
BARRY CREECH
KARL KNUTSEN
Attorneys
U.S. Department Of Justice
1401 H. Street, N.W., Suite 4000
Washington, D.C. 20530
Telephone: (202) 307-3952
Facsimile: (202) 307-5802