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January 21, 1997

The Honorable Anne K. Bingaman
Assistant Attorney General
Department of Justice
Anti-Trust Division
10th Street & Constitution Avenue, N.W.
Washington, D.C. 20530

Re: Merger of Three Group Practices Specializing in Gastroenterology in Lehigh Valley, PA - Gastroenterology Associates, Ltd./GI Associates, P.C./ Valley Gastroenterologists Request for a Business Review Letter

Dear Ms. Bingaman:

The above-named professional corporations desire to merge into a single professional corporation specializing in gastroenterology. We respectfully request the Anti-Trust Division of the United States Department of Justice, pursuant to the provisions of 28 C.F.R. 50.6, to review and state its present enforcement intentions with respect to the proposed merger.

Background Information

Each of the professional corporations has four physician-shareholder/employees board certified in gastroenterology and providing medical services to patients throughout the greater Lehigh Valley and elsewhere.

In these changing economic times and with the penetration of managed care plans into the Lehigh Valley, all of the physicians believe that they can maintain and improve the quality of their care, and maintain or reduce their costs, if they merge into a single practice as proposed by the merger.

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The Department of Justice has stated that examining the lawfulness under the Anti-trust laws of a merger of physician practices uses the same anti-trust standards that apply to any other merger or combination of competing entities. The Clayton Act requires the delineation of relevant product and geographic markets and then the evaluation of the likely economic effect of the merger in that market. The merger is unlawful if it may tend substantially to lessen the competition in any relevant market by creating, enhancing or facilitating the exercise of market power. "Market power" is generally defined in terms of what substitutes, as a practical matter, are reasonably available to consumers of each product of the merging firm if the prices of the product were raised by a small but significant amount. Services provided by a particular physician specialty may often be a relevant service market. Based on the facts of this case, it appears that gastroenterology services are the relevant service market in this case.

It is respectfully submitted that the merger of these practices in the relevant geographic and service market will not have an adverse, but rather will have a beneficial effect on the quality of care and the prices with respect to the services being offered.

Relevant Market

The Lehigh Valley is a geographic area situated in Eastern Pennsylvania approximately 60 miles north of Philadelphia. It consists primarily of two counties, Lehigh and Northampton, and three cities, Allentown, Bethlehem and Easton. Medical care, including gastroenterology services, are available in Philadelphia, approximately 60 minutes away; in Reading, Pennsylvania, approximately 45 minutes away, and in the Wilkes-Barre/Scranton area, approximately 90 minutes away. However, for purposes of this request, the physicians agree that the relevant geographic market is the "Greater Lehigh Valley" which includes Lehigh and Northampton Counties, Carbon County to the north, the eastern portion of Berks County to the west, and the northern portion of Bucks County to the south. This larger geographic area is included because in addition to providing services at several Lehigh Valley Hospitals, (1) the physicians who are members of the above-referenced practices provide services at Gnaden Huetten Memorial

Hospital and Palmerton Hospital in Carbon County, and Quakertown Hospital (now part of St. Luke's Hospital) in Quakertown, Bucks County, and (2) because this region is relevant with regard to any legal analysis by the Department concerning a substituted method of delivery of gastroenterology services to consumers and managed care companies in this immediate area.

A zip code analysis of the patients treated by the physicians supports the conclusion that the greater Lehigh Valley is the relevant geographic market (see Table #1 attached.) While more than fifty percent of the patients are from Lehigh County, a substantial number are generated from Northampton, Bucks, Berks and Carbon Counties.

Further, the physicians advertise in the separate yellow pages of the Allentown, Bethlehem & Easton telephone directories and offer their services to patients in all of these cities. These cities have historically considered themselves to be part of a greater Lehigh Valley region as is evidenced by the numerous quasi-governmental agencies and organizations which refer to the Lehigh Valley, i.e. Lehigh Valley (formerly Allentown-Bethlehem-Easton) International Airport, Lehigh Valley Association of Realtors; Lehigh Valley Business Council on Health Care; Lehigh Valley Mental Health Center; Lehigh Valley Convention and Visitor Bureau, etc., etc.

Finally, and perhaps most significantly, advertising by managed care contractors and others offer the services of these physicians throughout the Greater Lehigh Valley. Any meaningful review of the relevant market compels the need to examine the area in which managed care operators would define as <u>its</u> market.

<u>Relevant Product (Service)</u>

Gastroenterology is generally the study and treatment of the stomach and the intestine and their diseases. The physicians provide a wide range of diagnostic and treatment services to their patients. Many of their services overlap similar services provided by internists, family practitioners and general and rectal surgeons.

Potential Adverse Competitive Effects

The important question for the Department is whether the proposed merger raises concerns about any significant potential adverse competitive effects based on an analysis of market characteristics. It is respectfully submitted that the merger of these groups will not raise any significant potential adverse effects, but rather will produce substantial efficiencies allowing the physicians to maintain or improve the quality of their care and maintain more effective control over their costs thereby allowing prices to stabilize accordingly.

In determining the anti-competitive effects of this merger, it is difficult to determine substitutes for the services being provided. For instance, the procedure known as a flexible sigmoidoscopy, a diagnostic procedure often used by gastroenterologists, is performed by not only gastroenterologists but also by many family practitioners and internists. Because there currently exists a plethora of available options for those consumers and managed care companies who require sigmoidoscopies, it is clear that the impact of this merger on pricing for this procedure would be negligible and, to the extent that prices are increased for such services, any increase would not be attributable to or arise out of the intended merger of these practices.

It should further be noted that with regard to a procedure commonly performed by a gastroenterologist known as a "colonoscopy", such procedures are routinely performed by both general and rectal surgeons and, to the extent that pricing would increase as a result of this merger for colonoscopies, consumers and managed care companies could utilize the readily available services of not only other gastroenterologists in the region but also the many qualified general and rectal surgeons in the immediate area.

With regard to a procedure known as "upper-endoscopy", many of these procedures are performed by general surgeons in addition to gastroenterologists and similarly, if prices were substantially to be increased by the merged group, consumers and managed care companies could look to general surgeons as well as other gastroenterologists to perform these procedures.

In a more general sense, many of the routine functions associated with the treatment of stomach and intestine disorders are performed by general practitioners and internists. In point of fact, it is common for patients who suffer from the early stages of discomfort never to reach the offices of a gastroenterologist. For example, general practitioners and internists routinely treat patients who are undergoing the early stages of a peptic ulcer. The physician will commonly not only treat these patients in their own office but will also order a series of upper GI and/or blood tests which may or may not lead to further treatments. Following several weeks of monitoring by the general physician, a patients condition may be improved. Consequently, it is not uncommon for many individuals suffering from gastrointestinal problems to be treated outside the specialty of gastroenterology.

Finally, in a similar light, there exists a host of other conditions and/or disorders of the stomach which are commonly treated, especially in the early stages, by physicians other than gastroenterologists including, but not limited to, ulcer disease, reflux, hepatitis, diarrhea, and constipation. As gastroenterologists also treat these stomach and intestine disorders, there are sufficient competitors in the market such that this merger will not effect prices or the quality of services with regard to these diseases.

In light of all these facts, the proposed merger will not result in significant adverse competitive effect. The above analysis discloses that there are sufficient substitutes as to the procedures and general medical services provided by gastroenterologists and others in the marketplace. It cannot seriously be argued that the merger of these groups will have an anti-competitive effect.

Market Analysis

There are approximately thirty (30) gastroenterologists in the relevant geographic area (see Table #2), not including gastroenterologists in the Berks County area. The merged group would constitute 40% of the gastroenterologists in the service area. There are seventeen (17) colon-rectal surgeons in the service area. The physicians constitute 26% of the gastroenterologists-colon-rectal surgeons in the geographic area.

It is also important to note that this merger does not prevent new gastroenterologists from establishing offices in the Greater Lehigh Valley. It is generally believed that all of the hospitals in the area, except one, have open staff policies and would welcome new gastroenterologists to the community.

Because of the difficulty in determining the anti-competitive effect of this merger, an informal analysis has been made of the endoscopy and colonoscopy procedures performed in the service area. These procedures were selected because they constitute a substantial portion of the income of the physicians and therefore a substantial expense to consumers and managed care companies.

There are nine hospitals in the Greater Lehigh Valley, three in Allentown, two in Bethlehem, one in Easton, one in Lehighton, one in Palmerton and one in Quakertown.[1] Table #3 demonstrates the total number of such procedures performed and the number of such procedures performed by the physicians.

This analysis discloses that less than one-third of these procedures are performed by the physicians who will form the merged group. This is an important factor in determining the effect of this merger on the market place. This analysis shows that there are many substitutes for the services that will be provided by the merged group. Certainly on the basis of this informal study, it cannot be suggested that the merger will have a substantial effect on the prices or quality of these services.

Pro-competitive Benefits of the Proposed Merger

The physicians intend to include utilization review and quality assurance monitoring in the new corporation. The physicians who will comprise the new corporation intend to establish efficiency and quality parameters in an effort to provide its services at a cost-effective rate. Managed care companies will

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[1]Allentown Osteopathic Medical Center and Quakertown Hospital have merged into and are now a part of St. Luke's Hospital, though continue to operate under their names and at their previous locations.

have the benefit of negotiating through a single representative for the services of these physicians.

The proposed merged corporation has the potential to reduce costs and pass such reduction in costs to the managed care companies and consumers.

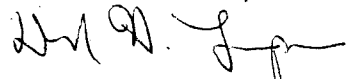
Conclusion

As indicated above, the proposed merger will not cause anti-competitive effects but will instead have significant pro-competitive benefits for consumers and managed care companies in the Greater Lehigh Valley.

Therefore, we respectfully request that the Anti-trust Division issue a business review letter indicating that it has not present enforcement intention with respect to this transaction. We are, of course, willing to provide any reasonably available additional information that may be necessary to evaluate the proposed transaction.

Thank you for your consideration.

Very truly yours,



Donald H. Lipson

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