

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

HEALTH CHOICE OF NORTHWEST  
MISSOURI, INC.,  
HEARTLAND HEALTH SYSTEM,  
INC., and ST. JOSEPH  
PHYSICIANS, INC.,  
Defendants.

Civil Action No: 95-6171-CVSJ6

15 U.S.C. § 1  
(Antitrust Violation  
Alleged)

15 U.S.C. § 4  
(Equitable Relief  
Sought)

Filed: September 13, 1995

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 the defendants named herein and complains and alleges as follows:

I.

JURISDICTION AND VENUE

1. This Complaint is filed by the United States under Section 4 of the Sherman Act, 15 U.S.C. § 4, as amended, to prevent and restrain a continuing violation by the Defendants of Section 1 of the Sherman Act, 15 U.S.C. § 1.

2. Each of the Defendants maintains offices, transacts business, and is found within the Western District of Missouri, within the meaning of 15 U.S.C. § 22.

## II.

### DEFENDANTS

3. St. Joseph Physicians, Inc. ("SJPI") is a Missouri for-profit corporation with its principal place of business in St. Joseph, Missouri, located in Buchanan County, Missouri ("Buchanan County"). Approximately 85% of the physicians working or residing in Buchanan County are shareholders of SJPI. Only physicians working or residing in Buchanan County are shareholders of SJPI.

4. Heartland Health System, Inc. ("Heartland") is a Missouri not-for-profit corporation with its principal place of business in St. Joseph, Missouri. Heartland is the largest employer and operates the only general acute care hospital in Buchanan County. Heartland, through subsidiaries and affiliates, also operates in a number of other sectors of the health care industry in Buchanan County, including managed

care, home health care, durable medical equipment, rehabilitation services, and hospice services.

5. Health Choice of Northwest Missouri, Inc. ("Health Choice") is a Missouri for-profit corporation with its principal place of business in St. Joseph, Missouri. Heartland and SJPI each owns 50% of the common stock of Health Choice. Health Choice provides managed care services to individuals located in Buchanan County.

6. Whenever this Complaint refers to any corporation's act, deed, or transaction, it means that such corporation engaged in the act, deed, or transaction by or through its members, officers, directors, agents, employees, or other representatives while they actively were engaged in the management, direction, control, or transaction of its business or affairs.

### III.

#### CONCERTED ACTION

7. Various firms and individuals, not named as defendants in this Complaint, have participated with the Defendants in the violation alleged in this

Complaint, and have performed acts and made statements in furtherance of the violation.

#### IV.

##### TRADE AND COMMERCE

8. Beginning at least as early as April 1986, certain employers in Buchanan County began to turn to managed care as a means of containing or better controlling their health care costs. Managed care is a method of health care financing and delivery in which health care providers are either paid one set, predetermined fee for servicing all or nearly all of an enrollee's health care needs regardless of the frequency or scope of the needed services, or are subject to a substantially discounted fee schedule and stringent utilization review (i.e., assessment of the provider's ongoing or proposed course of treatment for an enrollee to ensure that only necessary and appropriate tests, procedures, medications, goods, and services are provided). For example, one approach frequently used in managed care programs to control costs is to offer financial incentives to physicians which are designed to discourage unnecessary

hospitalization or undue hospital stays. In contrast, traditional indemnity insurance compensates providers for each service or procedure provided and subjects providers to utilization review only to the extent of confirming that the billed services or procedures were in fact provided.

9. In April 1986, certain physicians then practicing or residing in Buchanan County formed SJPI in response to the prospect of the entry of managed care into Buchanan County. Shortly thereafter, about 85% of the approximately 130 physicians then practicing or residing in Buchanan County became shareholders of SJPI. Each shareholder made a \$750 stock investment in SJPI. Many of the SJPI physicians were in separate, independent practices that competed with each other.

10. The physicians' primary purpose for creating SJPI was to deal in a concerted way with the managed care plans seeking to enter Buchanan County, and in particular, to negotiate fees and other contract terms with such plans on behalf of the SJPI physicians as a group. The SJPI Certificate of Incorporation states that one of the purposes for which the organization was

formed was to enter into contracts providing for prepaid individual or group medical services.

11. At no time did the physicians owning SJPI integrate their separate, individual medical practices in any economically significant way, share any financial risk for their failure to achieve predetermined cost containment goals, or create any new or additional health care product that would benefit consumers.

12. Beginning almost immediately after its incorporation, SJPI engaged in fee negotiations and otherwise dealt collectively on behalf of its member physicians with various managed care plans attempting to enter the market in Buchanan County. Initially, SJPI worked to delay entry of any managed care plan into Buchanan County. Between April 1986 and December 1989, no managed care plan reached an agreement on a provider contract with SJPI or with any individual SJPI physician despite attempts by plans to do so.

13. Heartland shared SJPI's fears that the development of managed care competition in Buchanan County would lead to lower charges and more efficient

utilization. On several occasions before January 1990, Heartland communicated to SJPI that Heartland and SJPI would have to work together in order to be in a position to exercise control over managed care plans that were attempting to enter Buchanan County.

14. In January 1990, Heartland and SJPI formed Health Choice, their own managed care plan, for the principal purpose of preventing other managed care plans that were attempting to enter Buchanan County from offering lower reimbursement rates to providers or different utilization review.

15. The Health Choice physician provider panel consisted almost exclusively of SJPI physicians, and nearly all the SJPI physicians participated on the Health Choice physician provider panel. The Health Choice physician provider panel consequently consisted of approximately 85% of the physicians working or residing in Buchanan County. Heartland was the primary provider of hospital services for Health Choice enrollees.

16. Health Choice developed a physician fee schedule and a utilization review program on behalf of

all of its member physicians. Health Choice used this physician fee schedule and utilization review program in negotiations with potential purchasers.

17. At no time did Heartland, SJPI, or the physicians participating on the Health Choice physician provider panel share any substantial financial risk for the physicians' failure to achieve predetermined cost containment goals in the provision of their services, or offer any new or additional product that justified their joint pricing activities.

18. On several occasions after the formation of Health Choice, Heartland, SJPI, and Health Choice advised managed care plans seeking to enter Buchanan County that Heartland and SJPI physicians would contract with the plan only through Health Choice and would require the plan to accept Health Choice's fee schedule and utilization review program. Since the formation of Health Choice, several managed care plans have attempted to enter Buchanan County independent of Health Choice (i.e., with their own physician provider panels, fee schedules, and utilization review programs), but none has successfully done so.



19. Since January 1994, Heartland has acquired the practices of nine family practice or general internal medicine physicians and two pediatricians already operating in Buchanan County. Heartland has also contemplated acquiring the practices of additional family practice and general internal medicine physicians, pediatricians, and possibly other physicians already operating in Buchanan County.

V.

INTERSTATE COMMERCE

20. Many employers and insurers remit substantial payments across state lines to Health Choice, Heartland, and SJPI physicians for the health care provided to their employees, enrollees, and their dependents in Buchanan County.

21. Many employers that remit payments to Health Choice, Heartland, and SJPI physicians are businesses that sell products and services in interstate commerce, and the size of those payments affects the prices of the products and services those businesses sell.

22. At material times, the Defendants have used interstate banking facilities, and Health Choice,

Heartland, and SJPI physicians have purchased substantial quantities of goods and services across state lines, for use in providing health care services to individuals in Buchanan County.

23. The activities of the Defendants that are the subject of this Complaint have been within the flow of, and have substantially affected, interstate trade and commerce.

## VI.

### VIOLATION ALLEGED

24. Beginning at least as early as April 14, 1986, and continuing until at least June 9, 1995, the Defendants and others engaged in a contract, combination, or conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. This offense is likely to continue or recur unless the relief requested is granted.

25. This contract, combination, or conspiracy consisted of a continuing agreement, understanding, and concert of action among the Defendants and others to

restrain or prevent the development of competitive managed care in Buchanan County.

26. For the purpose of forming and effectuating this contract, combination, or conspiracy, the Defendants and co-conspirators did the following things, among others:

- (a) agreed to form SJPI and Health Choice, for the purpose and with the effect of restraining or preventing the development of managed care in Buchanan County;
- (b) agreed not to contract with managed care plans seeking to enter Buchanan County except through Health Choice;
- (c) jointly negotiated and set fees on behalf of all SJPI physicians; and
- (d) urged SJPI physicians not to contract with managed care plans except through Health Choice.

27. This contract, combination, or conspiracy had the following effects, among others:

- (a) it unreasonably restrained price and other competition among managed care plans in Buchanan County;
- (b) it unreasonably restrained price competition among physicians in Buchanan County, resulting in higher prices for managed care;
- (c) it deprived consumers and third-party payers of alternative utilization review programs that could help reduce health care costs in Buchanan County; and
- (d) it deprived consumers and third-party payers of the benefits of free and open competition in the purchase of health care services in Buchanan County.

VII.

REQUEST FOR RELIEF

Plaintiff requests:

1. That the Court adjudge and decree that the Defendants entered into an unlawful agreement in unreasonable restraint of interstate trade and commerce

in violation of Section 1 of the Sherman Act,  
15 U.S.C. § 1;

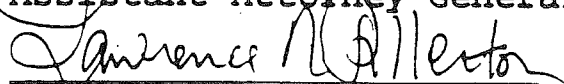
2. That the Defendants, their officers, directors, agents, employees, and successors, and all other persons acting or claiming to act on behalf of any of them, be enjoined, restrained, and prohibited for a period of ten years from, in any manner, directly or indirectly, continuing, maintaining, or renewing this agreement, or from engaging in any other combination, conspiracy, agreement, understanding, plan, program, or other arrangement having the same effect as the alleged violation; and

3. That the United States have such other relief as the nature of the case may require and the Court may deem just and proper.

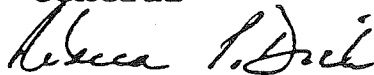
DATED: September 13, 1995



ANNE K. BINGAMAN  
Assistant Attorney General



LAWRENCE R. FULLERTON  
Deputy Assistant Attorney General



REBECCA P. DICK  
Deputy Director of Operations



GAIL KURSH, Chief  
Professions & Intellectual  
Property Section/HCTF

Attorneys  
Antitrust Division  
U.S. Dept. of Justice

STEPHEN L. HILL, JR.  
United States Attorney  
Western District of  
Missouri



EDWARD D. ELIASBERG, JR.  
JOHN B. ARNETT, SR.  
DANDO B. CELLINI  
MARK J. BOTTI  
GREGORY S. ASCIOLLA

Attorneys  
Antitrust Division  
U.S. Dept. of Justice  
600 E Street, N.W.  
Room 9422  
Washington, D.C. 20530  
(202) 307-0808