

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	Civil Action No. C94-1023
Plaintiff,)	COMPLAINT FOR INJUNCTIVE
)	RELIEF AGAINST COMBINATION
v.)	IN VIOLATION OF SECTION 7 OF
)	THE CLAYTON ACT, 15 U.S.C. § 18,
MERCY HEALTH SERVICES and)	AND SECTION 1 OF THE SHERMAN
FINLEY TRI-STATES HEALTH)	ACT, 15 U.S.C. § 1
GROUP, INC.,)	
)	
Defendants.)	Filed:
)	

VERIFIED COMPLAINT
(INJUNCTIVE RELIEF SOUGHT)

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable and other relief against the named defendants and alleges as follows:

1. The United States brings this suit to block the creation of an illegal monopoly through the proposed combination of the only two general acute care hospitals in Dubuque, Iowa -- Mercy Health Center ("Mercy") and the Finley Hospital ("Finley"). There are no other significant general acute care hospitals within a 70-mile driving distance of Dubuque.

2. Unless prevented, the combination of these two financially sound hospitals will eliminate competition and result in higher prices and lower quality for hospital services provided to health care consumers, particularly health insurance plans, employers, unions, and, ultimately, the citizens of the Dubuque area which

comprises the City of Dubuque and its environs. The cost of this loss of competition to the Dubuque area dwarfs any possible short term cost savings that be can be achieved only through the combination, assuming that a hospital monopolist would choose to pass on any such savings to consumers.

I.

JURISDICTION, VENUE AND DEFENDANTS

3. This action is filed under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, and Section 4 of the Sherman Act, 15 U.S.C. § 4, to prevent and restrain the violation by defendants of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 1 of the Sherman Act, 15 U.S.C. § 1.

4. Mercy Health Services, a Michigan corporation, and the Finley Tri-States Health Group, Inc. ("Tri-States") an Iowa corporation, both transact business, maintain offices and are found within the Northern District of Iowa. Mercy and Finley are operated, respectively, by the Sisters of Mercy Health Corp. ("SMHC") (a subsidiary of Mercy Health Services) and by Tri-States. Although the combination of Mercy and Finley, named the Dubuque Regional Health System, is formally structured as a partnership between Tri-States and SMHC, it is the equivalent of a merger of those hospitals for purposes of antitrust analysis.

5. The defendants are engaged in interstate commerce and in activities substantially affecting interstate commerce. In providing inpatient hospital services, both hospitals regularly receive substantial health care insurance reimbursement payments,

shipments of equipment and supplies, and patients from outside of Iowa.

II.

TRADE AND COMMERCE

6. General acute care hospitals provide a wide range of services in diagnosing and treating patients. They receive the bulk of their revenues from providing acute care inpatient hospital services, i.e., services provided for the diagnosis and treatment of patients who, because of the seriousness of their specific illness or general medical condition, require at least an overnight hospital stay. Acute care inpatient hospital services include room and board, medical and surgical services, around-the-clock monitoring and observation, and nursing care, as well as laboratory, x-ray, and various other support services.

7. Mercy and Finley are the only general acute care hospitals in Dubuque, Iowa. While there are a variety of medical facilities surrounding Dubuque, Mercy and Finley are the largest general acute care hospitals within a 70-mile driving distance of Dubuque. Mercy has a 422 licensed acute care beds and generated net inpatient revenues of approximately \$44 million in the calendar year ending December 31, 1993. Finley has 141 licensed acute care beds and generated net inpatient revenues of approximately \$31 million in its fiscal year ending June 30, 1993. Finley was identified in "100 Top U.S. Hospitals: Benchmarks for Success," a report recently issued by Health Care Investment Analysts, Inc. and Mercer Management

Consulting, Inc., as one of the 25 most efficient hospitals with fewer than 250 beds in the United States.

8. Like many general acute care hospitals, Finley and Mercy sell acute care inpatient hospitals services to a variety of health care purchasers. Such purchasers include health maintenance organizations ("HMOs"), preferred provider organizations ("PPOs"), and other "managed care plans." A managed care plan reduces health care costs by encouraging hospitals to compete vigorously on price and quality. It does so by contracting with hospitals in an area and employing financial incentives to encourage its enrollees to use the hospitals with which it contracts. A contracting hospital, in turn, offers preferential prices for the services that it provides to the plan's enrollees in return for the opportunity to retain or increase the hospital's patient volume from among enrollees of the plan.

9. By generating competition among hospitals for the provision of hospital services to their enrollees, managed care plans obtain hospital services at competitive rates, which substantially lowers costs of providing hospital care to consumers. These savings, in turn, permit managed care plans to offer health insurance coverage to consumers at lower premium rates.

10. Managed care plans constitute a significant, and growing, percentage of the revenues that Mercy and Finley receive. In 1993, treatment of managed care plan patients accounted for approximately 35 percent of the combined total inpatient net revenues that Mercy and Finley obtained from non-governmental health care purchasers.

11. In addition to providing acute care inpatient hospital services, general acute care hospitals also treat patients on an outpatient basis. Hospitals compete with other non-hospital providers such as clinics, ambulatory surgery centers, and physicians' offices in providing outpatient services to patients who can be treated on an outpatient basis. Patients who receive inpatient hospital care because of the severity of their specific illness or their general medical condition, however, cannot be treated safely and effectively on an outpatient basis. For that reason, health care purchasers, including managed care plans, do not view outpatient services as acceptable substitutes for acute inpatient care. Therefore, general acute care hospitals could profitably increase the prices of their acute care inpatient hospital services without causing a significant number of patients to switch to outpatient services.

12. The provision of acute care inpatient hospital services constitutes a line of commerce, or relevant product market, within the meaning of Section 7 of the Clayton Act.

13. Patients who require acute care inpatient hospital services must be admitted to a general acute care hospital by a physician who maintains admitting privileges at that hospital. Physicians, as a rule, maintain admitting privileges only at hospitals close to their offices. They do so because the travel time required to conduct rounds of their hospitalized patients at distant hospitals represent a disruption of their office practice and, therefore, a potential loss of income.

14. Patients also strongly prefer to be admitted to a general acute care hospital close to their homes, families, and friends. Therefore, patients typically perceive only conveniently located hospitals that provide quality care to be acceptable for acute care inpatient hospital services.

15. From Dubuque it is necessary to drive 70 miles or more before reaching hospitals comparable to Mercy or Finley in size, range of services, reputation for quality, and number of physicians with admitting privileges.

16. Because of their quality, convenience, and range of services, Mercy and Finley are uniquely situated to be used by physicians practicing in Dubuque for providing acute inpatient care to their patients. The vast majority of Dubuque physicians who admit patients to Mercy also admit patients to Finley. Very few of these physicians, however, have admitting privileges at any hospitals outside Dubuque, and the physicians who do have such privileges only rarely admit patients to those hospitals.

17. Because of the quality, convenience, and range of services at Mercy and Finley, residents of the Dubuque area strongly prefer to receive acute care inpatient hospital services at Mercy or Finley. For example, during the first half of 1993, over 90 percent of all Dubuque area residents who were hospitalized were admitted to Mercy or Finley.

18. For these reasons, managed care plans and other health care purchasers strongly prefer to contract with Mercy or Finley to provide the acute care inpatient hospital services needed by Dubuque

area residents, and they do not consider other hospitals to be acceptable substitutes. Therefore, Mercy and Finley could profitably increase the price of acute care inpatient hospital services without causing a significant number of residents of the Dubuque area to switch to other hospitals.

19. The Dubuque area is a section of the country, or relevant geographic market, within the meaning of Section 7 of the Clayton Act.

20. Because Mercy and Finley are each other's only competitor in the provision of acute care inpatient hospital services in the Dubuque area, their combination would result in a monopoly in the sale of acute care inpatient hospital services in that area.

21. Managed care plans have benefited from the vigorous competition between Finley and Mercy, which has resulted in their receiving competitive rates for acute care inpatient hospital services, saving them millions of dollars annually. A combination of Finley and Mercy would eliminate that competition, significantly reduce the ability of managed care plans to bargain for competitive rates, and give the combination the ability to increase prices for the provision of acute care inpatient hospital services to the detriment of Dubuque area residents.

22. In the foreseeable future, no new general acute care hospital is likely to enter the Dubuque area market.

IV.

VIOLATIONS ALLEGED

23. Pursuant to the Dubuque Regional Health System Partnership Agreement dated February 18, 1994, Mercy and Finley have agreed to combine by forming a partnership whose board of directors would control both entities. The partnership would be the equivalent of a merger between Mercy and Finley for purposes of antitrust analysis.

24. The proposed combination is likely to lessen competition and to restrain trade unreasonably in the provision of acute care inpatient hospital services in the Dubuque area in violation of Section 7 of the Clayton Act and Section 1 of the Sherman Act in the following ways:

- a. Actual and potential competition between Mercy and Finley in the provision of acute care inpatient hospital services in the Dubuque area will be eliminated; and
- b. Competition generally in the provision of acute care inpatient hospital services in the Dubuque area is likely to be substantially lessened.

PRAYER

Plaintiff requests:

1. That the proposed combination of Mercy and Finley be adjudged a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 1 of the Sherman Act, 15 U.S.C. § 1;
2. That preliminary and permanent injunctions be issued preventing and restraining the defendants and all persons acting on

their behalf from entering into or carrying out any agreement, understanding, or plan, the effect of which would be to combine Mercy and Finley;

3. That plaintiff have such other relief as the Court may deem just and proper; and

4. That the plaintiff recover the costs of this action.

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