UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA, Plaintiff, vs. WOMAN'S HOSPITAL FOUNDATION and WOMAN'S PHYSICIAN HEALTH ORGANIZATION, Defendants.	Civil Action No: 96-389-B-M2 Filed: April 23, 1996 15 U.S.C. §§ 1, 2 (Antitrust Violations Alleged) 15 U.S.C. § 4 (Equitable Relief)

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 named defendants and alleges as follows:

I.

JURISDICTION AND VENUE

1. The United States files this Complaint under Section 4 of the Sherman Act, 15 U.S.C. § 4, to prevent and restrain defendants' continuing violations of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1, 2.

2. Each of the defendants maintains offices, transacts business, and is found within the Middle District of Louisiana, within the meaning of 15 U.S.C. § 22.

II.

DEFENDANTS

3. Woman's Hospital Foundation is a Louisiana not-for-profit corporation with its principal place of business in Baton Rouge, Louisiana. It owns and operates Woman's Hospital, a facility with 149 staffed acute care beds, which provides a range of care, including inpatient, outpatient, and home health services, to women and infants in the Baton Rouge area. In 1995, Woman's Hospital's net revenues totalled about $83.5 million. Woman's Hospital's medical staff consists of approximately 50 specialists in obstetrics and gynecology ("OB/GYNs") and other specialists who provide services to women and infants. The OB/GYNs on Woman's Hospital's medical staff account for approximately 90% of OB/GYNs in the Baton Rouge area who treat privately insured patients.

4. Woman's Physician Health Organization ("WPHO") is a Louisiana not-for-profit corporation with its principal place of business in Baton Rouge. WPHO's participants comprise Woman's Hospital and nearly every physician on Woman's Hospital's medical staff. Those physicians and Woman's Hospital formed WPHO for the purpose of negotiating and entering into contracts with managed care plans on their behalf.

5. 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 subsidiaries or its or its subsidiaries' members, officers, directors, agents,

employees, or other representatives while they actively were engaged in the management, direction, control, or transaction of it or its subsidiaries' business or affairs.

III.

BACKGROUND

A. Overview of Obstetrical Markets in Baton Rouge

6. When Woman's Hospital opened on November 18, 1968, the other private hospitals in Baton Rouge stopped providing inpatient OB/GYN services. For about the next 20 years, Woman's Hospital was the sole private provider of inpatient obstetrical care in the Baton Rouge area.

7. In the mid-1980's, the development of managed care plans in the Baton Rouge area, and the consequent decline in traditional indemnity insurance plans, offered the opportunity for consumers to benefit from competition among physicians and hospitals. Traditional medical insurance plans, referred to as indemnity plans, pay a fee to providers of medical care (or indemnify patients) for each service or procedure provided. Indemnity plans generally provide little or no financial incentive or contractual obligation (such as providing insureds with incentives to use a particular hospital) for a physician or hospital to provide less costly care.

8. Managed care plans, in contrast, contract with hospitals and OB/GYNs and other doctors to deliver cost-effective care and give patients financial incentives to obtain such care. Managed care plans generally contract with a limited number of

providers in a community. By limiting the number of doctors and hospitals on the panel from which a managed care plan's members may receive their care, these plans induce providers to accept competitive terms to attain panel membership. Doctors compete by offering lower prices to managed care plans, by agreeing to practice medicine in a manner that limits hospital and specialist utilization, and by agreeing to provide care in less costly but medically appropriate settings, such as at lower cost hospitals. Hospitals similarly compete with other hospitals for panel membership, and hospitals that contract with the same managed care plan sometimes compete to attract physicians on the panel to use its facilities rather than a rival's facilities.

9. Nearly all managed care plans operating in Baton Rouge currently view inclusion of Woman's Hospital in their networks as necessary to make their products marketable to Baton Rouge employers.

B. Woman's Hospital's Initial Response to the Emergence of Inpatient Obstetrical Competitors

10. In 1989, Medical Center of Baton Rouge ("MCBR"), a 175-bed for-profit acute care hospital owned by Columbia/HCA, became the first private hospital in 20 years to compete with Woman's Hospital, offering inpatient obstetrical care to privately insured patients.

11. This new competition swiftly reduced the cost for some inpatient obstetrical patients in Baton Rouge. Woman's Hospital offered to waive the out-of-pocket expenses of any woman who

delivered her child at Woman's Hospital, who had requested previously admission to MCBR.

12. In January, 1991, a third medical provider announced plans to enter the inpatient obstetrical services market. General Health Inc. ("General Health"), which operates the Baton Rouge General Medical Center, a tertiary care hospital with 389 inpatient beds, announced plans to build the Baton Rouge General Health Center (the "Health Center"), a 105-bed satellite hospital with 5 to 6 dedicated OB/GYN beds. The Health Center was scheduled to open in 1994.

13. Woman's Hospital viewed General Health's entry into the inpatient obstetrical services market as a serious competitive threat. In a "position" statement, Woman's Hospital stated, "Baton Rouge General is now expanding into obstetrics with a satellite program and any patient volume treated at this new facility will come almost exclusively at the expense of Woman's Hospital." Similarly, the Strategic Planning Committee of Woman's Board of Directors explored competitive responses that would avoid "deep-discounting every delivery" to keep women from choosing the Health Center over Women's Hospital.

14. Woman's Hospital was particularly concerned about General Health's Health Center because General Health also owned Gulf South Health Plans, Inc. ("Gulf South"). Gulf South is the largest managed care plan in Baton Rouge, covering approximately one-third of the individuals enrolled in managed care plans. Woman's Hospital knew that Gulf South could offer incentives to

plan members and OB/GYNs to use General Health's lower cost Health Center. Gulf South was likely to be able to induce some of the OB/GYNs on Woman's Hospital's medical staff to admit patients to the Health Center. Consequently, once the new facility achieved full-service status, Gulf South might no longer routinely need Woman's Hospital, or at least would have substantially more negotiating leverage, because the Health Center would become a favored substitute for Woman's Hospital in Gulf South's network.

15. Woman's Hospital responded immediately to the announcement of the new Health Center by announcing its intention to end its contractual relationship with Gulf South. Privately, Woman's Hospital entered into negotiations with General Health and offered to continue contracting with Gulf South in return for General Health's agreement not to provide inpatient obstetrical services for the next 5 to 7 years. Woman's Hospital eventually retreated from this particular attempt to foreclose the Health Center from offering inpatient obstetrical services and took alternative steps to achieve the same result.

C. Woman's Hospital's Structural Response to the New Competitors

1. Formation of WPHO to Maintain OB/GYNs' Loyalty to Woman's Hospital

16. Woman's Hospital recognized that the Health Center's competitive impact would depend on OB/GYNs admitting patients to the new facility. The OB/GYNs on Woman's medical staff were then admitting their privately insured patients almost exclusively to

Woman's Hospital. If Woman's Hospital could deter these OB/GYNs from admitting to the Health Center, managed care plans could not use the availability of the Health Center to obtain deep discounts on deliveries from Woman's Hospital.

17. In 1993, Woman's Hospital formed an economic alliance with its medical staff in the form of defendant WPHO, a physician-hospital organization. Twelve of WPHO's 14 directors had to be either OB/GYNs or appointed to represent Woman's Hospital. WPHO's purpose was to establish a minimum physician fee schedule and serve as a joint bargaining agent on behalf of Woman's Hospital and participating doctors with managed care payers. Through WPHO, Woman's Hospital hoped to assure the continued "loyalty" of its medical staff. Hospital administrators held a number of meetings, some with the entire medical staff and some with the OB/GYNs on the staff, and informed the medical staff that all would be invited to join WPHO.

18. On February 25, 1994, Woman's Hospital sent a memorandum addressed to all members of the medical staff, transmitting applications and Professional Services Agreements for WPHO. The agreements authorize WPHO to contract with managed care plans on behalf of doctors at or above a minimum fee schedule that was to be formulated. The agreements also require the doctors to refer patients covered by WPHO contracts only to other WPHO doctors and to Woman's Hospital. Nearly every OB/GYN on Woman's Hospital's medical staff gave a preliminary commitment

to WPHO, subject to their review of the minimum fee schedule when it was completed.

2. Implementation of WPHO to Negotiate Jointly with Managed Care Plans

19. WPHO first developed the minimum fee schedule for WPHO doctors. It hired a consultant who gathered information on prevailing rates paid by managed care plans in Baton Rouge and received individual fee schedules from participating physicians. The consultant ultimately recommended a minimum fee schedule. Hospital administrators, acting on behalf of WPHO and its physicians, then informally consulted with select OB/GYNs and increased the fees proposed by the consultant for some OB/GYN services. The resulting fees for OB/GYNs were substantially higher than the fees that managed care plans were then paying OB/GYNs under individual contracts.

20. WPHO presented this fee schedule to its participating physicians with the option to approve it or quit the organization. All WPHO participating doctors renewed their commitment to WPHO by approving its schedule of minimum fees. Managed care plans' acceptance of the elevated OB/GYN fee schedule hinged on the OB/GYNs' commitment to deal with the plans through WPHO. If a significant number of them broke ranks and contracted independently of WPHO at lower rates, the plans could continue their successful strategy of selectively contracting with limited panels, consisting of fewer than all of the OB/GYNs participating in WPHO, at fees lower than the OB/GYNs could obtain collectively through WPHO.

21. WPHO then began contacting managed care plans operating or seeking to begin operations in Baton Rouge. All existing plans viewed WPHO's fee schedule for OB/GYN physician services as a marked increase over prevailing fees and WPHO's OB/GYN panel as overly broad. The plans also understood that they would have to contract with WPHO when their current contracts expired. WPHO signed contracts with several managed care plans, two of which were attempting to set up operations in the Baton Rouge area. Each of these new plans first attempted to contract directly with OB/GYNs independently of WPHO but was unsuccessful. Although these plans resisted contracting through WPHO, they were ultimately forced to contract with WPHO to obtain the OB/GYN physician services they needed to make their plans viable. One of the plans explored whether it could market a plan offering only the Health Center but found that, even if it could have contracted with OB/GYNs, Baton Rouge employers insisted that plans offered to their employees include Woman's Hospital.

22. Woman's Hospital's contract with Gulf South, the largest plan in the area, came up for renewal in 1994. Gulf South was then bidding on a substantial contract to cover employees of the Parish of Baton Rouge. The Parish required eligible bidders to have a three-year contract with Woman's Hospital. Gulf South wanted a hospital-only contract with Woman's Hospital; it had existing individual contracts with most, but not all, OB/GYNs participating in WPHO and consequently sought a contract for hospital services without OB/GYN physician

services. When Woman's Hospital refused to contract apart from WPHO physicians, Gulf South eventually agreed to contract through WPHO, which required contracting with Woman's Hospital and all WPHO participating physicians. As a result, Gulf South was forced to accept OB/GYNs on its panel that it had not previously included. In addition, the WPHO minimum OB/GYN physician fee schedule was applicable to this new contract, and was significantly higher than the fee schedule Gulf South had previously agreed to in individual contracts with its participating OB/GYNs.

23. Woman's Hospital's strategy succeeded. When the Health Center opened in July, 1994, WPHO enabled Woman's Hospital to limit its competitive response to waiving direct co-payments from women who wanted to deliver at the Health Center. Woman's Hospital was able to avoid offering significant discounts to managed care plans for deliveries because WPHO prevents managed care plans from obtaining financial or other contractual arrangements with OB/GYNs on Woman's Hospital's medical staff that would cause them to admit patients to the Health Center.

24. Through WPHO, Woman's Hospital succeeded in maintaining the economic "loyalty" of the OB/GYNs on its medical staff. WPHO enabled the OB/GYNs collectively to exercise bargaining power, that they had not possessed individually, and thus to obtain higher fees and resist the patient-shifting financial incentives and contractual obligations that managed care plans would obtain in a competitive market. Managed care plans were deprived

consequently of the opportunity to benefit from competition among OB/GYNs and between Woman's Hospital and the Health Center or any other potential entrant into the inpatient obstetrical services market.

IV.

INTERSTATE COMMERCE

25. Many employers and insurers remit substantial payments across state lines to Woman's Hospital, WPHO, and the doctors participating in WPHO.

26. Many employers that directly or indirectly remit payments to Woman's Hospital, WPHO, and doctors participating in WPHO 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.

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

V.

FIRST CLAIM FOR RELIEF
(Conspiracy in Unreasonable Restraint of Trade)

28. Beginning at least as early as February 22, 1994, and continuing until at least September 9, 1995, the defendants and others, not named as defendants in this case, 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.

29. This contract, combination, or conspiracy consisted of a continuous agreement, understanding, and concert of action among the defendants and others to reduce competition among competing OB/GYNs, to develop a minimum fee schedule for the OB/GYNs, and to authorize WPHO to negotiate jointly on behalf of those OB/GYNs and Woman's Hospital with managed care payers.

30. For the purpose of forming and effectuating this contract, combination, or conspiracy, the defendants and others did the following things, among others:

(a) Invited competing OB/GYNs to participate in WPHO, which would set minimum fees and jointly negotiate with managed care plans;

(b) Informed competing OB/GYNs that concerted action was contemplated and invited;

(c) Formed WPHO;

(d) Obtained competing OB/GYNs' agreement to adhere to the plan that WPHO would establish a minimum fee schedule and would negotiate collectively on their behalf;

(e) Established a minimum fee schedule for otherwise competing OB/GYNs participating in WPHO at levels substantially higher than those paid by managed care plans;

(f) Directed managed care plans to WPHO as the designated joint bargaining agent for Woman's Hospital and WPHO OB/GYNs;

(g) Jointly negotiated fees and other competitive contractual terms on behalf of Woman's Hospital and competing WPHO OB/GYNs; and

(h) Through WPHO, entered jointly into contracts with managed care plans that generally provided for substantially higher OB/GYN fees than those that WPHO OB/GYNs had received under preexisting individual contracts or would have received under such contracts.

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

(a) It unreasonably restrained price and other competition among WPHO participating OB/GYNs;

(b) It caused higher prices for OB/GYN and inpatient obstetrical services in the Baton Rouge area;

(c) It hindered development of innovative healthcare financing and delivery systems in the Baton Rouge area by reducing, to the point of nearly eliminating, competition among OB/GYNs and thereby competition among hospitals for the provision of inpatient obstetrical services;

(d) It deprived managed care plans of the benefits of competition between Woman's Hospital and other hospitals; and

(e) It deprived insurers, employers and individual consumers of the benefits from free and open

competition in the purchase of OB/GYN and inpatient obstetrical services in the Baton Rouge area.

VI.

SECOND CLAIM FOR RELIEF
(Attempted Monopolization)

32. Beginning as early as February, 1991, and continuing until approximately August, 1992, Woman's Hospital willfully attempted to maintain its monopoly in inpatient obstetrical services in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2. This offense is likely to recur unless the relief requested is granted.

33. With the specific intent and the dangerous probability of maintaining its monopoly in inpatient obstetrical services in the face of planned entry announced by General Health, Woman's Hospital attempted to enter into an agreement with General Health whereby General Health would not enter into the market for inpatient obstetrical services in return for Woman's Hospital giving lower inpatient rates to General Health's Gulf South Health Plan.

VII.

THIRD CLAIM FOR RELIEF
(Monopolization)

34. Beginning at least as early as April, 1993, and continuing until at least September 9, 1995, Woman's Hospital willfully maintained its monopoly in inpatient obstetrical services in violation of Section 2 of the Sherman Act, 15 U.S.C.

§ 2. This offense is likely to continue or recur unless the relief requested is granted.

35. For the purpose, and with the actual effect, of maintaining its monopoly in inpatient obstetrical services, Woman's Hospital took the following acts, among others, in violation of Section 2:

(a) It organized and participated in the contract, combination or conspiracy alleged in the First Claim of this Complaint, and in the formation and operation of defendant WPHO; and

(b) It reduced, and nearly eliminated, competition among OB/GYNs and thereby prevented significant price competition from developing among hospitals for the provision of inpatient obstetrical care in the Baton Rouge area.

VIII.

REQUEST FOR RELIEF

Plaintiff requests:

1. That the Court adjudge and decree that the defendants entered into an unlawful 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;

2. That the Court adjudge and decree that, by maintaining and attempting to maintain a monopoly in inpatient obstetrical services, Woman's Hospital violated Section 2 of the Sherman Act, 15 U.S.C. § 2;

3. That 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 the conduct alleged herein or from engaging in any other conduct, combination, conspiracy, agreement, understanding, plan, program, or other arrangement having the same effect as the alleged violations; and

4. 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: April 23, 1996

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