

UNITED STATES DISTRICT COURT  
DISTRICT OF MONTANA  
HELENA DIVISION

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 ) Civil Action No. CV-80-92-H  
 v. )  
 )  
 MONTANA NURSING HOME ASSOCIATION, ) Filed: June 13, 1980  
 INC., )  
 Defendant. )

COMPLAINT

The United States of America, plaintiff, by its attorneys acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This Complaint is filed and this action is instituted under Section 4 of the Sherman Act (15 U.S.C. §4), to prevent and restrain the continuing violation by the defendant, as herein-after alleged, of Section 1 of the Sherman Act (15 U.S.C. §1).

2. The defendant maintains its principal office, transacts business and is found within the District of Montana.

II

THE DEFENDANT

3. The Montana Nursing Home Association, Inc. [hereinafter the "Association"], is a non-profit corporation, organized and existing under the laws of the State of Montana with its principal place of business in Helena, Montana. The Association is a trade association for the nursing home industry in Montana. Approximately 70 nursing homes throughout the State, representing over two-thirds of all nursing home beds in Montana, are members of the Association.

### III

#### CO-CONSPIRATORS

4. Various persons, not named herein as defendants, have participated as co-conspirators in the offense hereinafter alleged, and have performed acts and made statements in furtherance thereof.

### IV

#### TRADE AND COMMERCE

5. Nursing homes provide daily care to various individuals, including the elderly, blind, and other disabled persons. Most homes offer one or more types of care, ranging from highly skilled nursing and rehabilitative services to less skilled service generally known as intermediate care.

6. A system of "Grants to States for Medical Assistance Programs," 42 U.S.C. §1396, commonly known as the Medicaid program, was created by Congress in 1965, and today is the primary source of health care for indigents under the Social Security laws. Medicaid is a cooperative federal/state venture, jointly financed by federal and state funds. Currently, every State except Arizona participates in Medicaid. While the amount of funds provided by the federal government exceeds the amount provided by the states, participating states are required to assume the major responsibility in administering the program.

7. To qualify for federal Medicaid funding, states must offer certain mandatory services, including skilled nursing home care, to eligible recipients. At its option, a state may provide other services, including intermediate nursing home care. More Medicaid funds are spent on nursing home care than on any other

single service furnished by the Medicaid program. In fiscal year 1977, \$6.7 billion, approximately 40% of all Medicaid funds, were spent on nursing home care.

8. Almost every nursing home in Montana offering skilled and/or intermediate care participates in the Medicaid program, which is administered by the State's Department of Social and Rehabilitative Services [hereinafter "SRS"]. All nursing homes providing care under the Medicaid program in Montana must submit to SRS each year an "Application for Participation" in which the homes agree to abide by the terms and conditions set forth in the application. SRS then certifies the homes as participating providers, agreeing to reimburse each home for the services it provides.

9. The amount each nursing home in Montana is paid for its services is determined by rules of reimbursement promulgated by SRS. Within certain federal guidelines, the state is free to determine its specific reimbursement methodology.

10. Approximately 65% of all occupied nursing home beds in Montana are paid for with funds provided by the Medicaid program. The provision of nursing home care in Montana accounts for the largest share of total Medicaid expenditures. In fiscal year 1979, the Montana Medicaid program spent \$29,390,583.51 for nursing home services, representing payment for 1,349,182 patient days, and accounting for approximately 55% of all Medicaid funds spent by the state.

11. Pursuant to the Medicaid program, substantial payments have been made to Montana nursing homes by the State of Montana from funds received across state lines from the United States

Treasury. Currently, the federal share of Montana's Medicaid expenditures is approximately 65%. The activities of the defendant and co-conspirators, as hereinafter alleged, have had a substantial effect upon interstate commerce.

V

VIOLATION ALLEGED

12. Beginning in or about 1978, and continuing to the present time, the defendant and its co-conspirators have engaged in a continuing combination and conspiracy in unreasonable restraint of the aforesaid trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. §1).

13. The combination and conspiracy has consisted of a continuing agreement, understanding, and concert of action among the defendant and its co-conspirators to raise the price of nursing home services in Montana paid under the Medicaid program.

14. In furtherance of the aforesaid combination and conspiracy, the defendant and the co-conspirators have done those things which they have combined and conspired to do, by means of the following acts, among others:

- (a) Jointly refusing, and encouraging others to jointly refuse, to enter into contracts with SRS to care for Medicaid patients except upon such terms and conditions as have been agreed upon by the defendant and its co-conspirators; and
- (b) Acting as bargaining agent, and encouraging and assisting the Association's attorneys to act as bargaining agent, for Association member nursing homes to negotiate the terms

and conditions on which the homes would contract with SRS to care for Medicaid patients.

## VI

### EFFECTS

20. The aforesaid combination and conspiracy has had the following effects, among others:

- (a) Competition among nursing homes with respect to the terms and conditions on which they will contract to care for Medicaid patients has been eliminated; and
- (b) Prices charged by nursing homes for the care of Medicaid patients have been increased.

### PRAYER

Wherefore, plaintiff prays:

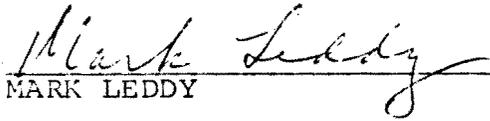
1. That the alleged combination and conspiracy among the defendant and its co-conspirators be adjudged and declared to be in unreasonable restraint of trade in violation of Section 1 of the Sherman Act.

2. That the defendant, its officers, directors, partners, committees, agents, employees, successors, assigns and attorneys and all persons acting or claiming to act on its behalf, be enjoined from continuing or renewing the combination and conspiracy alleged herein and from entering into any similar agreement or concert of action.

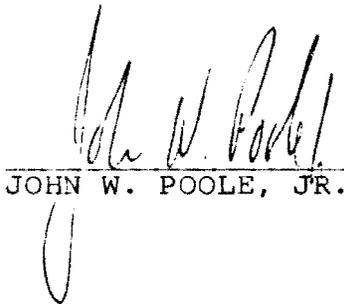
3. That the court grant such other relief as it deems appropriate.

  
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