IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. CARSON B. BURGSTINER; GREGORY K. WHITAKER; A. JOSEPH EDWARDS, JR.; JULES TORAYA; LOUIS P. LEOPOLD; SPEIR N. RAMSEY; JAMES D. SMITH; DAVID M. THOMAS; EDWARD D. BIGGERSTAFF III; JOHN H. ANGELL; DARNELL L. BRAWNER; DAVID W. FILLINGIM; STEPHEN Y.S. CHENG; AMOS TIMNA; M. M. SCHNEIDER; LAWRENCE S. BODZINER; WILLIAM G. SUTLIVE; R. W. SCARBROUGH, JR.; JOHN L. DEKLE; LAWRENCE ODOM; DONNA MOYERS; and GREGG PARKER, Defendants.	)	Civil Action No. CV491-044 2/7/91

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), the United States submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I.

NATURE AND PURPOSE OF THE PROCEEDING

On February 7, 1991, the United States filed a civil antitrust complaint alleging that defendants named above and co-conspirators conspired unreasonably to restrain price competition. This conspiracy had the effect of maintaining fees for the services provided by obstetricians/gynecologists ("OB/GYNs") in the Savannah area at artificial and non-competitive levels, increasing OB/GYN fees in the Savannah area, restraining price competition among defendants, and depriving defendants' patients of the benefit of free and open competition in the sale of OB/GYN services, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

The Complaint alleges that beginning at least as early as February 1986 and continuing until March 1987, defendants and others conspired to exchange current and prospective fee information for OB/GYN procedures, resulting directly in higher fees to OB/GYN patients. Specifically, in July 1986, defendants increased their fees for normal deliveries and cesarean sections approximately $500 for each type of delivery.

The Complaint also alleges that defendants and co-conspirators: met under the auspices of the OB/GYN Society of Chatham County on at least four occasions in 1986 to discuss and exchange OB/GYN fees; communicated between February 1986 and March 1987, regarding current and prospective OB/GYN fees; and reached an understanding as to their range of OB/GYN fees,

including the range of OB/GYN fees they would submit to the Savannah Business Group, an organization negotiating the price of medical services on behalf of employers in Savannah.

The relief sought in the Complaint is to prevent defendants from continuing or renewing the alleged conspiracy or from engaging in any other conspiracy or adopting any practice having a similar purpose or effect for a period of 10 years.

Defendants will also be required to file annual reports with the Court and the Government certifying that defendants have had no communications of the type prohibited by the Final Judgment regarding fees charged for OB/GYN services.

Entry of the proposed Final Judgment will terminate the action except that the Court will retain jurisdiction over the matter for further proceedings which may be required to interpret, enforce or modify the Judgment, or to punish violations of any of its provisions.

II.

DESCRIPTION OF THE PRACTICES INVOLVED IN THE ALLEGED VIOLATION

At trial, the Government would have made the following contentions:

(a) Defendants are competing OB/GYNs practicing medicine in Savannah, Georgia and comprise approximately 90% of the OB/GYN market in the Savannah area.

(b) On at least four occasions in 1986 - February 5, June 10, June 23, and July 7 - some or all of the defendants attended meetings organized by one defendant, Jules Toraya, and held in the office of Dr. Toraya. These meetings were held under the auspices of a local association, the OB/GYN Society of Chatham County, that had not met for several years. Minutes were made of each meeting. The meetings and discussions were a response to a proposal by Savannah Business Group's Preferred Health Resources ("SBG/PHR"), an organization seeking doctors to submit their fees for participation in SBG/PHR's program. SBG/PHR would select doctors for their program whose fees were within a particular range.

(c) During the course of these meetings and on other occasions, defendants discussed and exchanged information about their fees for many OB/GYN procedures.

(d) As a direct result of defendants' price exchange, the fees charged by the OB/GYNs in Savannah were artificially inflated and patients were charged these higher prices. Specifically, in July 1986, defendants increased their total obstetric care fees approximately one-third, so that they fell in the range of $1,840 to $2,050.

III.

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States and defendants have stipulated that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h). Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(e), the proposed Final Judgment may not be entered unless the Court finds that entry is in the public interest. Section X of the proposed Final Judgment sets forth such a finding.

The proposed Final Judgment is intended to ensure that defendants reach independent decisions as to their fees by eliminating any discussions or other communications among OB/GYNs of current and prospective fees.

A. Prohibitions And Obligations

The Final Judgment enjoins defendants from entering into any agreement with any other medical practice or physician to fix medical fees. It also prohibits them from discussing with any other medical practice specializing in the practice of obstetrics or gynecology in the Savannah area the adoption of uniform, increased, or specific medical fees.

The Final Judgment further prohibits defendants from communicating to or exchanging with any other medical practice or physician specializing in the practice of obstetrics or gynecology in the Savannah area any information concerning

current or future medical fees, or the consideration of a change in medical fees.

Defendants may, however, communicate with each other about medical fees in a particular matter if they have a physician-patient relationship and the communications concern only medical fees incurred as a result of such relationship, or they are jointly treating the same patient and the communications concern the medical fees to be charged that patient.

The Final Judgment obligates each defendant to file with plaintiff, and with the Court under seal, on or before each anniversary date of the Final Judgment, a Declaration stating that defendant has complied with the terms of the Final Judgment and has had no communications of the type prohibited under the Final Judgment.

The Final Judgment also provides that an authorized representative of the Department of Justice may visit defendants' offices, after providing reasonable notice, to review their records and to conduct interviews regarding any matters contained in the Final Judgment. Defendants may also be required to submit written reports, under oath, pertaining to the Final Judgment.

Paragraph VIII of the Final Judgment provides that nothing in the Final Judgment shall prevent defendants from exercising rights permitted under the First Amendment to the United States Constitution to petition any federal or state government executive agency or legislative body concerning legislation,

rules or procedures, or to participate in any federal or state administrative or judicial proceeding.

A defendant may also form an integrated joint venture or deal with a third-party payer on collectively determined terms in that capacity, provided that defendant inform plaintiff of his or her intention to form or join an integrated joint venture in defendant's annual Declaration. An "integrated joint venture" is defined in Paragraph III of the Final Judgment as "a joint arrangement to provide pre-paid health care services in which physicians who would otherwise be competitors pool their capital to finance the venture, by themselves or together with others, and share substantial risk of adverse financial results caused by unexpectedly high utilization or costs of health care services."

B. Scope Of The Proposed Final Judgment

The Final Judgment applies to defendants, as well as each of their practices, associates, members, agents, employees, successors, and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of the Final Judgment by personal service or otherwise.

Moreover, pursuant to the terms of the Final Judgment, any physician who joins a defendant's practice or any person who becomes the business manager of that practice, within 10 years after the date of the entry of the Final Judgment, shall be furnished a copy of the Final Judgment.

C. Effect Of The Proposed Final Judgment On Competition

The relief in the proposed Final Judgment is designed to ensure that OB/GYNs in the Savannah area establish their fees independently and that patients and other purchasers of OB/GYN services receive competitive fees. The injunction against exchanges of current and prospective fees and the reporting requirement of Paragraph V are designed to eliminate restraints on price competition among OB/GYNs in the Savannah area. In addition, although not contained in the Final Judgment, defendants have agreed to dissolve the OB/GYN Society of Chatham County. Defendants, through their attorneys, have represented to the Department of Justice that the OB/GYN Society of Chatham County will hold no more meetings and will no longer exist.

The Department of Justice believes that this proposed Final Judgment contains adequate provisions to prevent further violations of the type upon which the Complaint is based and to remedy the effects of the alleged conspiracy.

IV.

REMEDIES AVAILABLE TO
POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of such actions. Under the provisions of Section 5(a) of the

Clayton Act, 15 U.S.C. § 16(a), the Judgment has no prima facie effect in any subsequent lawsuits that may be brought against defendants in this matter.

V.

PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to Robert E. Bloch, Chief, Professions and Intellectual Property Section, U.S. Department of Justice, Antitrust Division, 555 4th Street, N.W, Room 9903, Judiciary Center Building, Washington, D. C. 20001, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. Section VII of the proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation or enforcement of the Final Judgment.

VI.

ALTERNATIVE TO THE PROPOSED FINAL JUDGMENT

The alternative to the proposed Final Judgment would be a full trial of the case. In the view of the Department of Justice, such a trial would involve substantial cost to the

United States and is not warranted since the proposed Final Judgment provides the relief that the United States sought in its Complaint.

VII.

DETERMINATIVE MATERIALS AND DOCUMENTS

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b), were considered in formulating the proposed Final Judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Amelia K. Duroska, hereby certify that I caused a copy of the Competitive Impact Statement to be served on the 7th day of February, 1991, by first class mail, postage prepaid, upon the attached service list:

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