

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Civil Action No.
) 78-554-Orl-Civ-Y
HALIFAX HOSPITAL MEDICAL)
CENTER; VOLUSIA COUNTY)
MEDICAL SOCIETY, INC.,)
)
Defendants.)

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2 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 ("Judgment") as to Halifax Hospital Medical Center ("Center") submitted for entry in this civil antitrust proceeding.

I

NATURE OF THE PROCEEDING

On November 27, 1978, the United States filed a civil antitrust complaint alleging that Volusia County Medical Society, Inc. ("Society") and the Center had combined and conspired to impair the ability of Florida Health Care Plan ("Plan"), a health maintenance organization ("HMO") in Daytona Beach, Florida, to commence and maintain operations and to compete in the delivery of health care services in the Volusia County area. The complaint alleged that the combination and conspiracy violated Section 1 of the Sherman Act, 15 U.S.C. §1.

Following submission of a Stipulation, proposed Consent Decree, and a Competitive Impact Statement as to defendant

Society, and after holding a hearing, this Court entered a Final Judgment as to the Society on September 19, 1980.

Entry of the attached Judgment will terminate this action, except that the Court will retain jurisdiction to interpret, modify or enforce the Judgment, or to punish violations of any of its provisions.

II

DESCRIPTION OF THE PRACTICES INVOLVED IN THE ALLEGED VIOLATION

The Center is a 600-bed medical facility located in Daytona Beach, Florida. The Center, which is the largest medical facility in Volusia County, is operated by a five-member Board of Commissioners, appointed by the Governor of Florida. This Board has the responsibility of making appointments to the medical staff.

The other defendant, the Society, is an association of physicians in Volusia County with approximately 200 members.

The complaint alleges that beginning in or about 1971, defendants and co-conspirators combined and conspired to impair the ability of the Plan to operate and compete in the Volusia County health care market.

The complaint alleges that the Center has the broadest range of medical services of any health care facility in the area and that it is a virtual necessity that the Plan's physicians be members of the Center's medical staff to treat Plan patients at the Center. It further alleges that for the purpose of hindering the Plan and knowing that their actions could have an adverse impact

on the Plan, the defendants and co-conspirators (1) publicly advocated the lack of need for the Plan while formulating a proposal for their own HMO; (2) established a Professional Procurement Committee at the Center which discouraged non-local physicians who contemplated affiliating with the Plan from locating in the Volusia County area; (3) excluded physicians who contemplated affiliation with the Plan from staff appointments at the Center; and (4) adopted, published and distributed a resolution opposing the Plan.

The complaint alleges that the conspiracy has had the following effects, among others: (1) the formation and development of the Plan has been delayed and obstructed; (2) the Plan has been denied the opportunity to compete freely in the provision of health care services in the Volusia County area; (3) competition in the provision of health care services in the Volusia County area has been restrained; and (4) consumers have been deprived of free and open competition in the market for provision a health care services in the Volusia County area.

III

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States and the Center have stipulated that the Court may enter the Judgment after compliance with Antitrust Procedures and Penalties Act. The stipulation provides that neither party has made any admission about any issue of fact or law. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties

Act, the Judgment may not be entered until the Court determines that entry is in the public interest.

A. Prohibited Conduct

The Judgment prohibits four categories of conduct. The first category relates to actions directed against or affecting any actual or proposed HMO. It prohibits any conspiracy or agreement that, in purpose or foreseeable effect, impairs the ability of an HMO to operate or compete in the Volusia County health care market.

The second category relates to any professional procurement committee or other committee that engages in certain kinds of policies or practices. The Center is enjoined from establishing a committee that, in purpose or foreseeable effect, discourages physicians from seeking medical staff privileges at the Center or excludes physicians from the Center's medical staff because of any actual or proposed affiliation with an HMO or because of any purported lack of need for additional physicians in such physician's medical specialty. An exception to this provision relates to the Center's ability to contract with physicians for the exclusive provision of medical specialties which are principally hospital-based.

Another category of conduct prohibited relates to discrimination with respect to the Center's patients and prospective patients and to the Center's employees. The Center is enjoined from conspiring with anyone with the

purpose or effect of discriminating against patients or employees because they are enrolled or are contemplating enrollment in an HMO.

The fourth category of conduct prohibited relates to discrimination by the Center against any HMO or against any physician who is affiliated with an HMO in regard to the teaching assignments of the Center's Family Practice residency physicians. A provision within this section allows the Center to consider professional training needs of the residents in the assignment process.

Two exceptions to the Judgment provisions are contained in Section VIII. First, nothing shall prohibit or limit the Center's ability to carry out its duties under applicable Florida statutes and regulations. Second, nothing in paragraphs IV, V and VI shall prohibit the Center's ability, to the extent otherwise lawful, to (1) prepare or furnish testimony, information or advice to, or negotiate with, any governmental body or agency, or assist others in doing so; (2) advise its Board of Commissioners, employees and others of existing or proposed legislation, regulations or governmental programs, or communicate its views about them or solicit others' views; (3) inform its Board of Commissioners, employees and others of any testimony, information or advice supplied to, or negotiations with, any governmental body or agency; and (4) suggest or recommend that its Board of Commissioners, employees or others undertake any of these activities. Section VIII further provides, however, that

this exception to the Judgment's injunctive provisions does not apply if the activities are undertaken as a sham, including without limitation, activities that are intended to achieve the effects prohibited by the Judgment through means other than the action of a governmental body or agency.

Another section in the Judgment states that the Center shall require as a condition of sale or lease of its assets that the acquiring or leasing party agree to be bound by the provisions of the Judgment and that such agreement be filed with the Court.

The Judgment requires that the Center furnish to each medical staff member and to each administrator a copy of the Judgment. In addition, the Center must file with the Court an affidavit specifying the substance and manner of compliance with this notification requirement. All new members of the Center's Board of Commissioners, medical and administrative staff must also be provided with copies of the Judgment by the Center at such time as they become associated with the Center.

B. Scope and Duration of the Judgment

The Judgment will remain in effect for a period of ten years from the date it is entered. It applies to the Center and to each member of its Board of Commissioners, its employees, its attorneys, its agents and to all persons in active concert or participation with any of them who receive actual notice of the Judgment.

C. Effect of the Judgment on Competition

The relief in the Judgment is designed to prevent the continuation or recurrence of the alleged activities directed at the Plan or other HMO's. Compliance by the Center with the Judgment will assure that HMO's will be free to compete for the services of physicians and for patients without interference by the Center. Concurrently, the Center's right to carry out its function under state laws and regulations and to make known its views to governmental bodies and agencies is preserved.

The Judgment provides two methods for determining the Center's compliance with its terms. First, the United States is given access, upon reasonable notice, to the records of the Center to examine them for possible violations of the Judgment, and to interview Center officers, employees and agents. Second, the United States may require the Center to submit written reports about any matters pertaining to the Judgment.

The Department of Justice believes that the Judgment contains adequate provisions to prevent the Center from engaging in further violations of the type upon which this complaint is based.

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 the costs and reasonable attorney's fees. Entry of the Judgment will neither assist nor impair 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 lawsuit that may be brought against the Center.

V

PROCEDURES AVAILABLE FOR
MODIFICATION OF THE PROPOSED JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person believing that the Judgment should be modified may submit written comments to John W. Poole, Jr., Antitrust Division, United States Department of Justice, 10th & Penn. Ave., N.W., Washington, D.C. 20530 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 Judgment at any time prior to entry. The 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 its modification, interpretation or enforcement.

VI

ALTERNATIVE TO
THE PROPOSED CONSENT JUDGMENT

The alternative to the Judgment considered by the Department of Justice was a full trial against the Center of the issues on the merits and on relief. The Department considers litigation of the issues unnecessary because the Judgment provides appropriate relief against the violations alleged in the 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 Judgment.

Dated:

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