

APR 8 1987

FILED

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CLERK, U. S. DIST. COURT
Eastern District of California

JUN 25 9 03 AM '87

CLERK, U. S. DIST. COURT
EASTERN DISTRICT OF CALIF.
AT FRESNO
BY _____
DEPUTY

ENTERED

JUN 25 1987

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

CLERK, U. S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____
DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff,

v.

NATIONAL MEDICAL ENTERPRISES,
INC., and
NME HOSPITALS, INC.,

Defendants.

Civil No. CV-F-83-481 REC
FINAL JUDGMENT

WHEREAS, plaintiff, United States of America, having filed its Amended Complaint herein on February 21, 1984, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against, an admission by, or an estoppel against any party with respect to any such issue;

1 AND WHEREAS, defendants have agreed to be bound by the
2 provisions of this Final Judgment pending its approval by the
3 Court;

4 NOW, THEREFORE, without adjudication of any issue of fact
5 or law herein, and upon consent of the parties hereto, it is
6 hereby

7 ORDERED, ADJUDGED and DECREED as follows:

8 I.

9 This Court has jurisdiction over the subject matter of this
10 action and over each of the parties hereto. The Amended
11 Complaint states a claim upon which relief may be granted
12 against defendants under Section 7 of the Clayton Act, as
13 amended (15 U.S.C. § 18).

14 II.

15 As used in this Final Judgment:

16 A. "General acute care hospital" means any hospital
17 facility with an organized medical staff which provides 24-hour
18 acute inpatient care, including basic services (e.g., medical,
19 nursing, surgical, anesthesia, laboratory, radiology, pharmacy
20 and dietary), secondary services (e.g., obstetrics and
21 pediatrics), or tertiary services (e.g., certain kinds of
22 cancer and cardiac care).

1 B. "Modesto area market" means all of Stanislaus County
2 (including the City of Modesto), California, except for the
3 communities of Turlock and Denair, and also includes the
4 communities of Ripon and Escalon in southern San Joaquin
5 County, California.

6 C. "NME" means defendant National Medical Enterprises,
7 Inc.; each division, subsidiary, or affiliate thereof
8 (including defendant NME Hospitals, Inc.); and each officer,
9 director, employee, attorney, agent, or other person acting for
10 or on behalf of NME.

11 D. "Person" means any natural person, corporation,
12 association, firm, partnership, or other business or legal
13 entity.

14 III.

15 A. The provisions of this Final Judgment shall apply to
16 NME, its successors or assigns, and to all other persons in
17 active concert or participation with any of them who shall have
18 received actual notice of this Final Judgment by personal
19 service or otherwise.

20 B. NME shall require as a condition of the sale or other
21 disposition of Doctors Medical Center in Modesto, California
22 that the acquiring party agree to be bound by the provisions of
23 this Final Judgment.
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1 C. In the event that NME sells a division, subsidiary, or
2 affiliate and that division, subsidiary, or affiliate does not
3 own, operate, control, lease, or manage, directly or
4 indirectly, any general acute care hospital in the Modesto area
5 market, then said division, subsidiary, or affiliate shall,
6 once sold, no longer be bound by this decree, and the entity
7 purchasing said division, subsidiary, or affiliate shall not be
8 bound by this decree simply as a result of said purchase.

9 IV.

10 NME is hereby enjoined and restrained for a period of ten
11 (10) years from the entry of this Final Judgment from, directly
12 or indirectly, purchasing, consolidating with, acquiring
13 control of, entering into a management contract with, or
14 leasing any general acute care hospital located in the Modesto
15 area market without the prior written consent of plaintiff, or
16 if plaintiff objects, the approval of the Court upon NME's
17 establishing, by a preponderance of the evidence, that the
18 proposed transaction will not substantially lessen competition
19 or tend to create a monopoly in any line of commerce in any
20 section of the country. In the event that NME shall seek the
21 approval of the Court for a proposed transaction, plaintiff
22 shall, if requested by NME and if plaintiff in the exercise of
23 its discretion considers the request to be reasonable, join
24 with NME in expediting any and all proceedings by the Court in
25 connection therewith.
26

V.

1 For the purpose of determining or securing compliance with
2 this Final Judgment, and subject to any legally recognized
3 privilege, from time to time:

4 A. Duly authorized representatives of the Department of
5 Justice shall, upon written request of the Attorney General or
6 of the Assistant Attorney General in charge of the Antitrust
7 Division, and on reasonable notice to NME made to its principal
8 office, be permitted:

9 (1) Access during office hours of NME to inspect and copy
10 all books, ledgers, accounts, correspondence,
11 memoranda, and other records and documents in the
12 possession or under the control of NME, who may have
13 counsel present, relating to any matters contained in
14 this Final Judgment; and

15 (2) Subject to the reasonable convenience of NME and
16 without restraint or interference from it, to
17 interview officers, employees and agents of NME, who
18 may have counsel present, regarding any such matters.

19 B. Upon the written request of the Attorney General or of
20 the Assistant Attorney General in charge of the Antitrust
21 Division, made to NME's principal office, NME shall submit such
22 written reports, under oath if requested, with respect to any
23 of the matters contained in this Final Judgment as may be
24 requested.
25

1 C. No information or documents obtained by the means
2 provided in this Section V. shall be divulged by any
3 representative of the Department of Justice to any person other
4 than a duly authorized representative of the Executive Branch
5 of the United States, except in the course of legal proceedings
6 to which the United States is a party (including grand jury
7 proceedings), or for the purpose of securing compliance with
8 this Final Judgment, or as otherwise required by law.

9 VI.

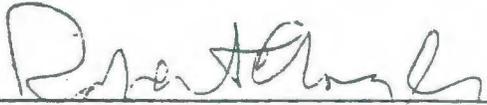
10 Jurisdiction is retained by this Court for the purpose of
11 enabling any of the parties to this Final Judgment to apply to
12 this Court at any time for such further orders and directions
13 as may be necessary or appropriate for the construction,
14 implementation, or modification of any of the provisions of
15 this Final Judgment, for the enforcement of compliance
16 herewith, and for the punishment of any violations hereof.

17 VII.

18 This Final Judgment will expire on the tenth anniversary of
19 the date of its entry by the Court.

20 VIII.

21 Entry of this Final Judgment is in the public interest.

22 
23 UNITED STATES DISTRICT JUDGE

24 Dated: June 24, 1987
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