



**DEPARTMENT OF JUSTICE**

Antitrust Division

**ANNE K. BINGAMAN**

Assistant Attorney General

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October 31, 1994

James M. Parker, Esquire  
Modrall, Sperling, Roehl, Harris  
& Sisk, P.A.  
500 Fourth Street, N.W.  
Sunwest Building  
Suite 1000  
Post Office Box 2168  
Albuquerque, New Mexico 87103-2168

Dear Mr. Parker:

This letter responds to your request on behalf of Pulmonary Associates, Ltd. (Associates) and Albuquerque Pulmonary Consultants, P.A. (Consultants) for the issuance of a business review letter pursuant to the Department of Justice's business review procedure, 28 C.F.R. § 50.6. You have requested a statement of the Department's current enforcement intentions with respect to the proposed combination of Associates and Consultants. For the reasons explained below, the Department currently does not intend to bring suit to block the proposed combination if Associates and Consultants go forward with their merger.

The facts, as we understand them, based on communications with you, Associates, Consultants, and other sources are as follows.

Associates and Consultants are pulmonary specialist physician groups in Albuquerque, New Mexico. Each employs five pulmonologists, four full time and one part time. Pulmonology is a major specialization recognized by the medical profession.

Among other procedures, pulmonologists perform bronchoscopies and thoracentesis, place critically-ill patients on oxygen delivery systems, including ventilators and respirators, and perform more routine procedures such as treating allergies, asthma and infections affecting the lungs.

Based on our investigation of this matter, however, it appears that board-certified pulmonologists are not the exclusive providers of these medical procedures or treatments in the Albuquerque area. For example, general surgeons and cardiac surgeons place patients on ventilators; thoracic surgeons and internists perform thoracentesis; and family physicians and other primary care physicians treat patients for asthma, allergies, and lung infections. More than 100 physicians from various specialties were identified in the Albuquerque metropolitan area as providing each of these pulmonology-type services.

The health maintenance organizations and other third-party payors in Albuquerque currently employ, contract with or reimburse many nonpulmonologists to provide the same care and services as that provided by pulmonologists. The Medicare and Medicaid programs also allow and reimburse nonpulmonologists to provide pulmonology-type care and services.

In the geographic area of Albuquerque, New Mexico, in addition to Associates and Consultants, seven staff pulmonologists are employed by the University Hospital at the University of New Mexico and five pulmonologists are employed by the Lovelace Medical Center. Associates and Consultants admit and treat patients at the two major independent Albuquerque hospitals, Presbyterian Healthcare Services and St. Joseph Healthcare System. The staffs at both the Presbyterian and St. Joseph hospital facilities are open, and privileges for performing all types of pulmonary care, including the most complex pulmonary treatments, such as initiating the use of ventilators, have been awarded to many nonpulmonologists. At St. Joseph hospital, for example, 72 non-pulmonologists have ventilator privileges.

On the basis of our investigation, including interviews with third party payers in the Albuquerque area, it does not appear that the proposed combination would enable the members of the combined groups to exercise market power. The Department of Justice, therefore, does not intend to challenge the proposed combination of Consultants and Associates if the parties decide to proceed. In accord with our normal practice, however, the Department remains free to bring whatever action or proceeding it subsequently concludes is required by the public interest if the merger proves anticompetitive in purpose or effect.

This statement is made in accordance with the Department's

business review procedure, 28 C.F.R. § 50.6. Pursuant to its terms, your business review request and this letter will be made publicly available immediately, and any supporting data will be made publicly available within thirty days of the date of this letter, unless you request that any part of the materials be withheld in accordance with paragraph 10(c) of the business review procedure.

Sincerely,

/s/

Anne K. Bingaman  
Assistant Attorney General