

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil Action No. C94-1023
)	
vs.)	Hon. Michael J. Melloy
)	
MERCY HEALTH SERVICES and)	UNITED STATES' THIRD REQUEST
FINLEY TRI-STATES HEALTH)	FOR DOCUMENT PRODUCTION
GROUP, INC.,)	
)	
Defendants.)	

UNITED STATES' THIRD REQUEST FOR DOCUMENT PRODUCTION

Under Rules 26, 33, and 34, Fed. R. Civ. P., and the Order for Expedited Discovery in this matter, the United States requests that Defendants, Mercy Health Services and Finley Tri-States Health Group, Inc., produce the following documents. Pursuant to the Order for Expedited Discovery, all documents responsive to this Request, are to be produced within 10 days after service of this Request. All written responses, answers and documents shall be sent to Jessica N. Cohen, Antitrust Division, United States Department of Justice, 555 Fourth Street, N.W., Room 9901, Washington, D.C. 20001.

I. DEFINITIONS

I. "All documents" means all documents that can be located by a reasonably diligent search of places you reasonably believe to contain such documents.

1. "Document" means any written, recorded, or graphic

material, whether prepared by you or by any other person, that is in your possession, custody, or control, including: memoranda, reports, letters, telegrams, electronic correspondence, and other communications recorded in any form or medium; notes, minutes, and transcripts of conferences, meetings, and telephone or other communications; contracts and other agreements; statements, ledgers, and other records of financial matters or commercial transactions; notebooks, calendars, and diaries; diagrams, graphs, charts, and other drawings; plans and specifications; publications; photographs; photocopies, microfilm, and other copies or reproductions; tape, disk, and other electronic recordings; rolodexes, telephone directories, and address books; and computer printouts. This term includes all drafts of a document; the original document (or a copy of it if the original is not available); and all copies that differ in any way from the original (including any notations, underlinings, highlighting, erasure, white-out, or other markings). The term also includes information stored in, or accessible through, computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations.

2. "Finley" means, for purposes of the Documents Requested, Finley Hospital, each of its predecessors, successors, divisions, parents, subsidiaries, and affiliates, each other person directly or indirectly, wholly or in part, owned or controlled by it, and each partnership or joint venture to which any of them is a party, and all present and former trustees, directors, officers,

employees, agents, consultants, or other persons acting for or on behalf of any of them.

3. "Identify" or "identity" means to state or a statement of:

(a) in the case of a person other than a natural person, its name and principal address and telephone number.

(b) in the case of a natural person, his or her name, employer, and business address, telephone number, and title or position; and

(c) in the case of a communication, its date, type (e.g., telephone conversation, letter, or meeting), the place where it occurred, the identity of each person who received the communication or who was present when it was made and the company, organization, or hospital by which he or she is or was employed, and the subject matter discussed.

4. "Mercy" means, for purposes of the Documents Requested, Mercy Health Center, each of its predecessors, successors, divisions, parents/subsidiaries, and affiliates (including, but not limited to Sisters of Mercy Corporation, SMHC Iowa/ Indiana Region, and Mercy Health Services), each other person directly or indirectly, wholly or in part, owned or controlled by it, and each partnership or joint venture to which any of them is a party, and all present and former trustees, directors, officers, employees, agents, consultants, or other persons acting for or on behalf of any of them.

5. "Person" means any natural person, corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute, governmental unit, or other legal entity.

6. "Relating to" means discussing, describing, referring to, reflecting, containing, analyzing, studying, reporting on, commenting on, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.

7. "You", "your" or "your company" mean Mercy and Finley.

8. The singular form of a noun or pronoun includes within its meaning the plural form of the noun or pronoun, and vice versa.

II. INSTRUCTIONS

1. Unless otherwise specified, this Request calls for production of documents prepared, sent, received or in effect at any time after January 1, 1988.

2. You need not produce documents that you have previously produced to the Antitrust Division in response to Civil Investigative Demands or the United States' First Request for Document Production in this case. Non-identical copies of documents, as defined above, are separate documents and should be produced.

3. In responding to this Request, you must produce all documents in your possession or custody or subject to your control or otherwise available to you, regardless of whether the documents are possessed directly by you.

4. If any portion of a document is responsive to this

Request, then the entire document must be produced. If any document contains privileged material, produce the entire document with the privileged material deleted. If any document cannot be produced in full for a reason other than a claim of privilege, produce the document to the extent possible and specify why you cannot produce the remainder of the document and provide any information, knowledge or belief you have concerning the unproduced portion.

5. Any document or any part of a document withheld under a claim of privilege must be preserved. For each document or part of a document that is withheld under a claim of privilege, submit a sworn or certified statement from you, your attorney or a duly authorized officer of your company in which you:

- (a) identify the document and any attachments or appendices;
- (b) identify all persons to whom copies were sent or distributed and all other persons to whom the document or its contents were disclosed in whole or in part;
- (c) state the document's current location and the name of its current custodian;
- (d) state the basis on which privilege is claimed; and
- (e) state the number of the Request to which the document is responsive.

7. Documents produced pursuant to this Request shall be produced in the order in which they appear in your files, and shall

not be rearranged. Any documents that are stapled, clipped, or otherwise fastened together shall not be separated. Documents that are in file folders or enclosures shall be produced in the original folders or enclosures. Indicate the office or division and person from whose files each document was produced. Place all documents requested by this Request in separate file folders or other enclosures bearing the name of the defendant.

8. Identify each document produced with the initials of the defendant and number each page of each document consecutively, beginning with a number series that succeeds the last series used in stamping your documents previously produced to the Antitrust Division. These markings should appear in the lower right-hand corner of each page of each document but must not obscure the contents of any page.

9. All agreements, understandings or stipulations modifying, limiting or in any way altering your obligations under this Request must be confirmed or acknowledged in writing by the Department of Justice or one of its duly authorized representatives.

10. If the information requested by Document Request 2 is available in machine-readable form, it should be provided in that form and should conform to the following guidelines. If you wish to provide machine-readable documents in a format that differs from these guidelines, please contact us to determine if the proposed format will be acceptable.

Machine-readable data provided should be in a form that does not require specialized or proprietary hardware or software. Data

files should be in sequential format, also known as ASCII files or flat files, with the data fields in fixed-column positions. For each data file provided, the following information is needed: a record layout, a short narrative description of what the file contains, translation of any coded fields, the number of records in the file, and a printout of the first 100 records in report format. A record layout must contain the following pieces of information: name of the field, starting and ending position in the record, length of the field, and characteristics of the field (i.e., packed decimal, zoned decimal, alphanumeric, etc.).

The magnetic media should be 9-track tapes or PC diskettes of 5-1/4 or 3-1/2 inch. We can accept data in either ASCII or EBCDIC format. For 9-track tapes, unlabeled tapes are preferred. The record length, blocksize, and tape density must be provided. The tapes should be written with generic copy utilities rather than backup programs from a specific operating system. For PC files that are too large for one diskette, DOS BACKUP disk sets will be acceptable as long as they are accompanied by backup listings. Backup listings may be hard copy of ASCII files on non-backup diskettes. A backup listing must provide the pathname necessary to individually restore each file in the backup. Compression utilities are acceptable as long as the utility is provided and such provision does not violate licensing or copyright laws.

11. All questions relating to interpretations of, or compliance with this Request should be directed to Jessica N. Cohen (202/307-1027) at the following address: United States Department

of Justice, Antitrust Division, 555 Fourth Street, N.W., Room 9901, Washington, D.C. 20001.

III. DOCUMENTS REQUESTED

1. All documents relating to transfers of money or other consideration or to other capital redistributions between Mercy Health Center and any of its out-of-state parents, subsidiaries, or affiliates since January 1, 1989. This request does not include transfers in exchange for any goods or services. This request includes, but is not limited to documents relating to:

a. the date, amount, and purpose of any such transfer or redistribution;

b. the use of any such transfer or redistribution by the parent, subsidiary, or affiliate;

c. the rationale of any such transfer or redistribution;

d. any information given to the general public about such transfers or redistributions; and

e. any restrictions that would prevent such transfers or redistributions after the consolidation of the defendants into Dubuque Regional Health System.

Response:

2. All raw data from the telephone survey conducted in April and May of 1990 by KCA Research for Mercy. (See instruction 10 above regarding machine-readable information).

into Dubuque Regional Health System.

Response:

3. All documents relating to the Iowa Organized Delivery System ("IODS") for providing health care services.

Response:

Dated: August 12, 1994

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