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2 RICHARD H. BOOTE  
3 CAROLYN L. DAVIS  
4 U.S. Department of Justice  
5 Washington, D. C. 20530  
6 202/633-2426  
7

8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
10 FRESNO DIVISION

11 UNITED STATES OF AMERICA, )

12 Plaintiff, )

13 v. )

14 NATIONAL MEDICAL ENTERPRISES, )  
15 INC. and )  
16 NME HOSPITALS, INC., )

17 Defendants. )

Civil Action No.  
F-83-481-REC

Filed: February 21, 1984

18 AMENDED COMPLAINT

19 The United States of America, by its attorneys, acting  
20 under the direction of the Attorney General of the United  
21 States, brings this civil action to obtain equitable relief  
22 against the defendants named herein and complains and alleges  
23 as follows:

24 I.

25 JURISDICTION AND VENUE

26 1. This amended complaint is filed and this action is  
27 instituted under Section 15 of the Clayton Act, as amended (15  
28 U.S.C. § 25) to prevent and restrain violation by the  
defendants, as hereinafter alleged, of Section 7 of the Clayton  
Act, as amended (15 U.S.C. § 18).



1 III.

2 THE DEFENDANTS

3 6. NME is made a defendant herein. NME is a corporation  
4 organized and existing under the laws of the State of Nevada.  
5 It maintains its principal corporate office in Los Angeles,  
6 California. NME is engaged in a variety of operations  
7 throughout the United States, including: owning and managing  
8 general acute care hospitals, long-term care facilities, and  
9 psychiatric hospitals; supplying various other services and  
10 medical products to hospitals; providing nursing, therapeutic  
11 and respiratory services for home patient care; and owning and  
12 operating pharmacies, hemodialysis centers, ambulance services  
13 and other companies in fields related to medical care. As of  
14 April 1983, NME operated approximately 65 general acute care  
15 hospitals in the United States of which it owned 44, including  
16 Doctors Medical Center (hereinafter "DMC") and Modesto City  
17 Hospital (hereinafter "MCH"). NME's total revenues were  
18 approximately \$1.38 billion in fiscal year 1982.

19 7. NMEH is made a defendant herein. NMEH is a corporation  
20 organized and existing under the laws of the State of  
21 Delaware. It maintains its principal corporate office in Los  
22 Angeles, California, and is a wholly-owned subsidiary of NME.  
23 NME owns DMC and MCH indirectly through NMEH. NME assigned  
24 ownership of MCH to NMEH on January 1, 1983.

25 8. DMC is a general acute care hospital in the City of  
26 Modesto, California. It is the largest general acute care  
27 hospital in the Modesto area market. It has 298 beds, and in  
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1 1982, it had gross patient revenues of approximately  
2 \$80,957,000 and accounted for 77,804 inpatient days.

3 9. MCH is a general acute care hospital in the City of  
4 Modesto, California. Prior to the acquisition described in  
5 paragraph 20 (hereinafter "the acquisition"), MCH was owned by  
6 Modesto City Hospital, Inc., a California nonprofit public  
7 benefit corporation. Prior to the acquisition Modesto City  
8 Hospital, Inc. operated MCH as a general acute care hospital.  
9 MCH is the third largest general acute care hospital in the  
10 Modesto area market as measured by annual inpatient days and is  
11 the fourth largest as measured by bed capacity and annual gross  
12 patient revenues. MCH has 121 beds, and in 1982, it had gross  
13 patient revenues of approximately \$23,780,000 and accounted for  
14 30,442 inpatient days.

#### 15 IV.

#### 16 TRADE AND COMMERCE

17 10. General acute care hospitals provide a wide variety of  
18 products and services in connection with the care, diagnosis or  
19 treatment of patients who require nursing, medical or surgical  
20 services. Although there is some difference in emphasis among  
21 individual institutions, general acute care hospitals offer a  
22 range of integrated and interrelated products and services  
23 unduplicated by any other facility. Under California law, a  
24 licensed general acute care hospital is a hospital facility  
25 with an organized medical staff which provides 24-hour  
26 inpatient care, including the following basic services:  
27 medical, nursing, surgical, anesthesia, laboratory, radiology,  
28 pharmacy and dietary.

1 11. There are seven general acute care hospitals in the  
2 Modesto area market--four in the City of Modesto and one each  
3 in the communities of Ceres, Oakdale and Patterson. Two of  
4 these hospitals, DMC and MCH, are owned by NMEH, and two are  
5 owned by Memorial Hospitals Association. In 1982, these seven  
6 hospitals owned and operated 867 inpatient general acute care  
7 beds; their combined gross patient revenues were approximately  
8 \$183,832,000; and they accounted for a combined total of  
9 approximately 200,000 inpatient days.

10 12. Persons in the Modesto area market depend largely on  
11 the products and services provided by the general acute care  
12 hospitals in that area. Persons outside the Modesto area  
13 market primarily receive products and services from general  
14 acute care hospitals located outside the Modesto area market.  
15 The Modesto area market constitutes a geographic market for the  
16 provision of products and services by general acute care  
17 hospitals.

18 13. General acute care hospitals in the Modesto area market  
19 compete with each other for patients, medical staff and  
20 provider contracts. Prior to the acquisition, DMC and MCH were  
21 direct competitors in the Modesto area market.

22 14. The provision of products and services by general acute  
23 care hospitals in the Modesto area market is highly  
24 concentrated. In 1982, as measured by bed capacity, the market  
25 share of DMC in the Modesto area market was approximately 34%  
26 and the market share of MCH was approximately 14%. Before the  
27 acquisition, the four-firm concentration ratio was

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1 approximately 91%, and the HHI was 2376. After the  
2 acquisition, the four-firm concentration ratio was  
3 approximately 96%, and the HHI was 3336, an increase of 960.

4 15. In 1982, as measured by annual inpatient days, the  
5 market share of DMC in the Modesto area market was  
6 approximately 39%, and the market share of MCH was  
7 approximately 15%. Before the acquisition, the four-firm  
8 concentration ratio was approximately 94%, and the HHI was  
9 2660. After the acquisition, the four-firm concentration ratio  
10 was approximately 99%, and the HHI was 3847, an increase of  
11 1187.

12 16. In 1982, as measured by gross patient revenues, the  
13 market share of DMC in the Modesto area market was  
14 approximately 44%, and the market share of MCH was  
15 approximately 13%. Before the acquisition, the four-firm  
16 concentration ratio was approximately 96%, and the HHI was  
17 2920. After the acquisition, the four-firm concentration ratio  
18 was approximately 99%, and the HHI was 4060, an increase of  
19 1140.

20 17 There are substantial barriers to new entry by general  
21 acute care hospitals into the Modesto area market.

22 18. Defendants were at the time of the acquisition and are  
23 now engaged in interstate commerce and their activities  
24 substantially affect interstate commerce. NME is engaged in  
25 business throughout the United States. Before and after the  
26 acquisition defendants purchased substantial quantities of  
27 supplies, equipment, and medicines from sources outside of

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1 California for use in connection with the products and services  
2 provided by their general acute care hospitals in California,  
3 including DMC and MCH. Before and after the acquisition  
4 defendants received substantial revenues from private and  
5 governmental insurers located outside California in payment for  
6 the products and services provided by defendants' general acute  
7 care hospitals in California, including DMC and MCH. Patients  
8 who reside outside California have been treated at defendants'  
9 general acute care hospitals in California, including DMC and  
10 MCH.

11 19. At the time of the acquisition, Modesto City Hospital,  
12 Inc. was engaged in interstate commerce and its activities  
13 substantially affected interstate commerce. Modesto City  
14 Hospital, Inc. purchased substantial quantities of supplies,  
15 equipment and medicines from sources outside of California for  
16 use in connection with the products and services provided by  
17 MCH. Modesto City Hospital, Inc. received substantial revenues  
18 from private and governmental insurers located outside  
19 California in payment for the products and services provided by  
20 MCH. Patients who resided outside California were treated at  
21 MCH.

22 V.

23 VIOLATION ALLEGED

24 20. On or about December 30, 1982, NME acquired  
25 substantially all of the tangible assets of MCH from Modesto  
26 City Hospital, Inc.

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1        21. The effect of the acquisition may be substantially to  
2 lessen competition among general acute care hospitals in the  
3 Modesto area market in violation of Section 7 of the Clayton  
4 Act in the following ways, among others:

- 5            a. Actual and potential competition between  
6            DMC and MCH has been eliminated;
- 7            b. Concentration in the provision of products  
8            and services by general acute care  
9            hospitals in the Modesto area market has  
10           been substantially increased;
- 11           c. Patients, physicians, and group purchasers  
12           of general acute care hospital products  
13           and services in the Modesto area market  
14           may be denied the benefits of free and  
15           open competition in choosing among  
16           hospitals based on price, quality, and  
17           service; and
- 18           d. Competition among the general acute care  
19           hospitals in the provision of products and  
20           services in the Modesto area market may be  
21           substantially lessened.

22                            PRAYER

23        WHEREFORE, plaintiff prays:

24            1. That the acquisition of MCH by the defendants be  
25 adjudged and decreed to be in violation of Section 7 of the  
26 Clayton Act;

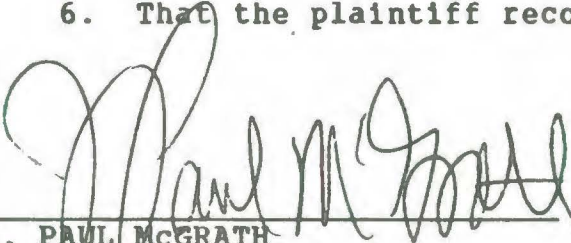
27            2. That the defendants be ordered to divest all assets,  
28 including improvements thereon, and all other interests in MCH;

1 3. That under such terms and conditions as the Court may  
2 prescribe, the defendants be required to restore MCH's general  
3 acute care hospital business to its competitive posture  
4 existing prior to the acquisition;

5 4. That the defendants be enjoined from, directly or  
6 indirectly, acquiring any stock or assets of any general acute  
7 care hospital in the Modesto area market and entering into any  
8 agreement to manage any general acute care hospital in the  
9 Modesto area market without prior notice to and approval by  
10 plaintiff or by the Court, should plaintiff withhold its  
11 approval;

12 5. That the plaintiff have such other and further relief  
13 as the Court may deem just and proper; and

14 6. That the plaintiff recover the costs of this action.

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