



**DEPARTMENT OF JUSTICE**  
Antitrust Division

**ANNE K. BINGAMAN**  
Attorney General

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July 2, 1996

Jill L. Cobert, Esquire  
LeBoeuf, Lamb, Greene & McRae  
125 West 55th Street  
New York, New York 10019

Dear Ms. Cobert:

This letter responds to your request on behalf of the Primary and Specialist Medical Center, L.L.C. (hereafter "PSMC") for a business review letter pursuant to the Department of Justice Business Review Procedure, 28 C.F.R. § 50.6, concerning PSMC's proposal to form an integrated group of physicians to provide medical services. For the reasons set forth below, the Department has no present intention to challenge the proposal.

PSMC is organized as a professional service limited liability company under the Connecticut Limited Liability Act. Members of PSMC consist of medical practices of various sizes and specialties in the New Haven, Connecticut area. Recognized medical specialties represented by PSMC's members, and number of physicians for each specialty, are currently as follows: Cardiology, 5; General Surgery, 3; Internal Medicine, 18; Obstetrics & Gynecology, 6; Ophthalmology, 1; Orthopedic Surgery, 2; Otolaryngology, 10; Psychiatry, 3. Members of PSMC consist of medical practices that range from solo practitioners to pre-existing partnerships and professional corporations. For example, all of the participating otolaryngologists already practice as a financially integrated group. The locations of main offices of PSMC members' practices are in New Haven in most cases, and otherwise tend to be in nearby large centers. Many members have satellite offices.

PSMC will negotiate and enter into contracts with managed care payers on behalf of PSMC's members on an exclusive basis. PSMC members will not be permitted to join other physician networks or individually to enter into managed care contracts.

PSMC will operate under centralized management exercised by a Board of Managers, which will include board members representative of each of the various medical specialties of PSMC physicians. Centralized management functions will include, among others, negotiation and execution of managed care contracts, credentialing and admission of new members, billing and collections, and utilization review and quality assurance programs.

PSMC will offer both capitated and discounted fee-for-service contracts to managed care payers. For the fee-for-service contracts, PSMC will create a risk pool by withholding 20 percent of all contract revenues, which will not be retained by PSMC or paid to PSMC members unless PSMC, as a group, meets utilization and cost containment goals that are agreed upon with the payer.

You have suggested a six city geographic market consisting of New Haven, Hamden, North Haven, West Haven, East Haven, and Branford. These cities are a subset of the New Haven - Waterbury - Meriden New England County Metropolitan Area. Your proposed market is supported by a study of current patient flows, derived from surveys of persons familiar with patterns of patient travel and the likely effect on those travel patterns of possible price increases. In addition, reference to a map shows that the six city geographic area is compact: no location in the area is more than approximately 20 miles from any other location. The area is crossed by excellent roads, including major interstate highways. Publicly available data indicates the existence of excellent public transportation. The area is, in general, easily traversed by automobile within approximately twenty minutes, a travel time period that payer representatives view as generally acceptable for patient convenience. The data you present is substantial and reinforced by publicly available data, and supports as reasonable your factual representation that the six city area is a relevant geographic market for analyzing PSMC's proposed operations.

Based on counts of physicians you have made, the percentage of PSMC physicians in each specialty is less than 20% within the six city area including New Haven. Indeed, in general the percentages appear to be substantially less than 20%. Furthermore, you state that PSMC intends to manage its growth so that the percentage of physicians in each specialty remains within 20% of the total in the market.

The Department's analysis of physician network joint ventures ("PNJVs") in which the member physicians collectively agree on prices or other significant terms of competition and jointly market their services is discussed in Statement 8 of the Statements of Enforcement Policy and Analytical Principles Relating to Health Care and Antitrust, issued by the Department and the Federal Trade Commission on September 27, 1994. That Statement sets forth an antitrust safety zone for exclusive PNJVs that share substantial financial risk and comprise 20% or fewer of the physicians in each physician specialty who practice in the relevant geographic market. Absent extraordinary circumstances, the Agencies will not challenge formation of such a PNJV.

Based on the facts that you have presented, PSMC's proposal meets the 20% safety zone of Statement 8. We are aware of no extraordinary circumstances concerning PSMC's proposal, and it appears that PSMC is unlikely to create market power that would lead to competitive harm to consumers.

Under the factual circumstances you have represented and for the reasons explained above, the Department has no intention of challenging PSMC's proposal at this time. In accordance with our normal practice, however, the Department remains free to bring whatever action or proceeding it subsequently comes to believe is required by the public interest if PSMC proves to be anticompetitive in purpose or effect.

This statement is made in accordance with the Department of Justice Business Review Procedure, 28 C.F.R. § 50.6, a copy of which is enclosed. Pursuant to its terms, your business review request and this letter will be made publicly available immediately. In addition, any supporting data that you have not identified as confidential business information under

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Paragraph 10(c) of the Business Review Procedure also will be made publicly available 30 days from the date of this letter.

Sincerely,

Anne K. Bingaman