



DEPARTMENT OF JUSTICE
Antitrust Division

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Patrick R. Gordon, Esquire
Krafsur, Gordon, Mott, Sanders & Miranda, P.C.
7400 Viscount Boulevard
Suite 103
El Paso, Texas 79925

Dear Mr. Gordon:

This letter responds to your request on behalf of the El Paso Surgical Group ("EPSG") for the issuance of a business review letter under the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6, concerning its proposed operation as a network of general surgeons in the El Paso, Texas area. For the reasons set forth below, the Department has no present intention to challenge the proposed activities under the antitrust laws.

Based on the information you provided, the EPSG will provide general surgical services to managed care plans and other third party payers in the El Paso area at reduced costs by developing for its members cost containment alternatives, marketing services, contract management and maintenance programs, and utilization review programs in addition to reducing general administrative costs. The network would share substantial financial risk either by accepting capitated rates or by withholding a minimum of 20 percent of the fees due each physician as a risk pool. The withhold will be distributed to the participating physicians only if EPSG as a group meets established cost containment, quality and practice utilization goals. Physicians will participate in EPSG on a non-exclusive basis. Members of EPSG can join other physician networks or organizations or contract as individuals with payers.

The background information you provided to us, which was confirmed by payers, suggests that the relevant geographic market is likely no smaller than the city of El Paso and the surrounding communities. EPSG will initially consist of eight of the 35, or 23%, of the licensed general surgeons with active hospital staff privileges at El Paso

area hospitals. You state that EPSG may expand to comprise a maximum of 12 general surgeons. If EPSG grows to 12 members, it will have 34% of the practicing general surgeons in the El Paso area. The other 23 general surgeons in the area practice as individuals or in small groups of two or three. You also state that while EPSG will initially be limited solely to physicians practicing general surgery, it could in the future expand its ownership to include primary care physicians and other specialists.

While we have not attempted to define precisely the boundaries of the relevant market for this business review, we are satisfied, based on payer interviews conducted in our investigation, that if EPSG limits participation to a maximum of 12 general surgeons, it is unlikely that the network would result in the exercise of market power or cause anticompetitive effects.

EPSG may also expand its membership to include primary care physicians and other specialists without creating antitrust concerns. If EPSG's members include no more than 30% of the physicians in any physician specialty practicing in the El Paso area, EPSG would fit within the safety zone for non-exclusive physician network joint ventures in the Department of Justice and Federal Trade Commission Statements of Antitrust Enforcement Policy and Analytical Principles Relating to Health Care and Antitrust, at 68-69 (Sept. 27, 1994). Concentrations of physicians in excess of the 30% safety zone limit may also create no difficulty under the antitrust laws, but the legality of such concentrations would be analyzed under the rule of reason. Id.

Consequently, the Department of Justice has no present intention of challenging the proposed activities of EPSG as described in this letter. However, in accordance with our normal practice, the Department remains free to bring whatever action or proceeding it subsequently concludes is required by the public interest if actual operation of EPSG 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 paragraph 10(c) of the Business Review Procedure also will be made publicly available in 30 days.

Sincerely,

Patrick R. Gordon, Esquire
Krafsur, Gordon, Mott, Sanders & Miranda, P.C.
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