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Restraint of Trade

Federal Court Denies Hospital's Motion To Dismiss California Doctors' Antitrust Case

A federal district court in California April 14 refused to dismiss antitrust claims levied by two neonatologists and their practice group against a hospital that essentially barred them from practicing there even though they hold privileges (*Perinatal Medical Group Inc. v. Children's Hospital Central California*, E.D. Cal., No. 09-1273, 4/14/10).

In a decision by Judge Lawrence J. O'Neill, the U.S. District Court for the Eastern District of California held that Dr. Krishnakumar Rajani, Dr. Stephen Elliot, and Perinatal Medical Group Inc. (PMG) alleged sufficient facts to state claims against Children's Hospital Central California, Specialty Medical Group Central California Inc. (SMG), and Central California Neonatology Group (CCNG) for conspiracy and restraint of trade under Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2.

Rajani and Elliot are neonatologists and shareholders in PMG. Until February 2009, Rajani was the medical director of the neonatal intensive care unit (NICU) at Children's. Children's is a nonprofit corporation that serves pediatric patients. It has a regional designation, which means that the most critically ill infants can be treated there. Through February 2009, PMG had a contract to provide 24/7 services for the Children's NICU.

Rajani and Elliot also had privileges at Community Medical Center. They alleged that their difficulties with Children's began after they helped Community open a new NICU.

According to the complaint, Children's and CCNG (a practice group made up of former PMG shareholders) conspired to bar Rajani and Elliot—and any other physician not associated with CCNG or SMG—from practicing at Children's. It alleged that Children's told Rajani that if PMG did not agree to practice exclusively at Children's and to refer patients exclusively to SMG, it would not renew PMG's contract. When Rajani and Elliot refused to agree to these terms, the hospital entered into a new contract with CCNG under which CCNG's physicians agreed to the exclusivity provisions.

Beginning in March 2009, the complaint further alleged, Children's told Rajani and Elliot that they could not admit patients to the NICU unless they were present physically during the patient's entire stay. The hospital's Medical Executive Committee (MEC) subsequently formalized this rule, thus requiring all admitting neonatologists to provide 24/7 on-site care for all patients admitted.

Case Filed. Rajani, Elliot, and PMG filed both a state court action and a federal court action arising out of these facts. In the federal case, at issue here, they alleged that the defendants engaged in a ''contract, combination . . . or conspiracy in restraint of trade'' and formed an unlawful monopoly. The defendants moved to dismiss for failure to state a claim upon which relief may be granted.

As an initial matter, the defendants argued that Children's, CCNG, and SMG were not single entities capable of conspiring with one another because they were not actual or potential competitors. The court rejected that assertion as to CCNG and SMG because physicians, including members of practice groups, are independent entities who can conspire with one another. In other words, CCNG could conspire with SMG, and individual physicians within each group could conspire with one another, it said.

A more difficult question for the court was whether the physicians and the hospital could conspire for antitrust purposes. Some courts have held that medical staff members cannot conspire with a hospital, it said, while other courts have concluded the opposite.

Based on the facts alleged in the complaint, the court rejected CCNG's position that it was unable to conspire with Children's as a matter of law. ''Whether a hospital and a group of physicians have divergent economic interests to allow a conspiracy is a question of fact,'' the court said.

Here, the plaintiffs alleged that CCNG and Children's had different economic interests, namely that the hospital had an interest in protecting the market share of its regional NICU, while CCNG—an independent contractor—had an interest being its exclusive provider of neonatology services, the court said. Thus, this case was not like one in which the physicians were members of the hospital's medical staff and operated as if they were officers in a corporation, if found.

Since at least some of the participants in the alleged conspiracy had economic interests different from those of the hospital, and the physicians' groups were independent contractors, the court said it could draw an inference that the defendants may have had an independent stake in the hospital's decision. Therefore, it said, it could not decide as a matter of law that the defendants were incapable of forming a contract, combination, or conspiracy.

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Antitrust Injury. The defendants also argued that the plaintiffs failed to allege a restraint of trade in violation of the Sherman Act. The plaintiffs responded that the defendants harmed competition by unduly limiting the ability of non-CCNG and non-SMG physicians to practice their profession and provide services in the relevant market. Additionally, they said the defendants deprived patients and referring physicians of the advantage of free and open competition in the purchase of physicians' services.

In addressing the defendants' argument, the court first rejected their reliance on the refusal-to-deal doctrine. The doctrine makes clear that an entity that enjoys monopoly power does not violate the antitrust laws simply by refusing to deal with the competition.

The doctrine was applied in the health care context in *Four Corners Nephrology Associates v. Mercy Medical Center of Durango*, 582 F.2d 1216 (10th Cir. 2009) (18 HLR 1323, 10/8/09). There, the U.S. Court of Appeals for the Tenth Circuit held that a hospital's refusal to deal with a physician who operated a competing nephrology clinic did not constitute anti-competitive conduct within the meaning of Section 2 of the Sherman Act.

The present court distinguished *Four Corners* on the basis that the parties in that case were competitors, whereas the present plaintiffs did not allege that they were in direct competition with Children's or its NICU. Because the parties were not competitors, the refusal-to-deal doctrine did not apply here, the court said.

The court also found relevant the different procedural postures presented by the cases. The Tenth Circuit decided *Four Corners* on a fully developed record, the court noted. Here, the case was before the court on a motion to dismiss. Development of the record is important in antitrust cases, the court said, because each element of a Sherman Act claim presents a question of fact. The fact finder in such a case must apply the rule of reason to determine whether the defendants engaged in a restrictive practice that should be prohibited as imposing an unreasonable restraint on trade, it said.

Similarly, the court said, the monopoly offense alleged by the plaintiffs here had two factual elements: whether the defendants had monopoly power in the relevant market, and whether that monopoly power was acquired through willful acquisition or as a consequence of a superior product, business acumen, or historic accident. The defendants did not address those elements, the court said.

The court concluded that the plaintiffs' complaint sufficiently and plausibly alleged the antitrust claims. ''Under certain factual circumstances,'' it said, ''an exclusive contract between a hospital and a specialty group of physicians, that requires every patient treated at the hospital to use the services of that firm of physicians, may violate Section 1 of the Sherman Act.''

In addition, the court said, courts have found antitrust violations in cases where there was a group boycott of individual physicians, and where restrictive rules incorporated in a hospital's bylaws precluded certain physicians from practicing there.

Stephen G. Auer and Vicki C. Gadbois, of Christensen & Auer, Pasadena, Calif., and Darryl J. Horowitt, of Coleman & Horowitt LLP, Fresno, Calif., represented the plaintiffs.

Thomas R. Burke, of Davis Wright Tremaine LLP, San Francisco; Douglas Corlett Ross, of Davis Wright Tremaine LLP, Seattle; and William C. Hahesy, of Law Offices of William C. Hahesy, Fresno, represented Children's. Charles L. Doerksen, of Doerksen Taylor LLP, Fresno, represented CCNG. William M. Woolman, of Atkinson Andelson Loya Ruud & Romo, Fresno, represented SMG.

The court's decision is available at http://op.bna.com/hl.nsf/r?Open=mapi-84qqyn.

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