UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA and STATE OF FLORIDA, Plaintiffs, v. MORTON PLANT HEALTH SYSTEM, INC. and TRUSTEES OF MEASE HOSPITAL, INC., Defendants.	)	Civil Action No. 94-748-CIV-T-23E Judge Steven D. Merryday

SUPPLEMENTAL CERTIFICATION OF HARREL ZIECHECK

I, HARREL ZIECHECK, being first duly sworn depose and say as follows:

1. I am the Chief Operating Officer for Morton Plant Hospital Association, Inc. ("Morton Plant")

2. This Supplemental Certification incorporates all my prior statements in the Certification entitled "Certification of Harrel Ziecheck" ("Initial Certification") dated September 11, 2000.

3. This Supplemental Certification is filed pursuant to the request of the United States Department of Justice for further clarification regarding possible violations of the Final Consent Judgment ("FCJ") disclosed in the Initial Certification.

4. Discussions concerning marketing and planning with respect to services other than those referred to in Section II(A) of the FCJ that occurred during Morton Plant Mease Health Care ("MPMHC") Board of Directors meetings are reflected in board minutes previously provided to the Department of Justice and Florida Attorney General. These include:

a. 2/27/95 Finance Committee minutes (bates numbers MPMHC 378-381 at 379) referencing purchase of surgery video system for Morton Plant Hospital;

b. 4/23/96 Board minutes (bates numbers MPMHC 143-146 at 145) referencing advertising and image campaign for Morton Plant Mease Heath Care name;

c. Discussions concerning the North Bay Hospital acquisition, which included discussions regarding obstetric services at North Bay (bates numbers MPMHC 201-205 at 202, 6/23/98 board minutes);

d. Discussions concerning the results of a public image study of the Morton Plant Mease Health Care name in Pasco and Pinellas County (bates numbers MPMHC 213-216 at 215, 3/24/98 Board minutes);

e. Discussions regarding the expansion of fetal monitoring at Mease Hospitals (bates numbers MPMHC 308-310 at 309, 8/25/97 Finance Committee minutes);

f. Discussions regarding promotion of cancer product line (bates numbers MPMHC 99-103 at 102, 11/26/ 96 Board minutes);

g. Discussions regarding Pasco County strategy (bates numbers MPMHC 209-212 at 211, 4/28/98 Board minutes); and

h. Discussions concerning market share growth for inpatient admissions, and discussion of oncology services plan for cancer services (bates numbers MPMHC 201-205 at 204, 6/23/98 Board minutes).

5. The identity of those present at these meetings, and the ultimate action taken on these issues by the Board or Committee, is located within each of the board minutes referenced above, previously disclosed to the Department of Justice and the Florida Attorney General.

In addition, I am aware of the following possible violations of the FCJ relating to marketing or planning of services other than those listed in Section II(A) of the FCJ:

6. I am aware of marketing being performed for North Bay Hospital under the Morton Plant Mease Health Care name. Caroline Goodrich (Vice President, Community Affairs, BayCare Health System ("BayCare")) and Susan Boydell (Director, Strategic Marketing,

BayCare) supervised this effort. This involved an advertising campaign to raise awareness of the Morton Plant Mease name in Pasco County, and to develop public association of that name with North Bay Hospital, commencing in approximately June 1999.

7. I am aware of a meeting of the Morton Plant Mease Community Affairs Committee on July 12, 1999, at which marketing and planning concerning Pasco County/North Bay development, diagnostic heart and vascular development, OB development, orthopedic surgery development, cancer development, and emergency service development were discussed. I am also aware of a meeting of this committee on March 13, 2000 at which developing North Bay's public image through the use of the Morton Plant Mease name was discussed. Present at these meetings were Alan Bomstein (MPMHC Board Member), Peter Blumencranz, MD (MPMHC Board Member), Karen Brown (MPMHC Board Member), Ronnie Duncan (Community Affairs Committee Member), Jerry Figurski (Community Affairs Committee Member), Ken Hamilton (MPMHC Board Member), Pat Korpan, (Community Affairs Committee Member), Debra Kynes (Community Affairs Committee Member), William Stafford, MD (Community Affairs Committee Member), Susan Boydell, Caroline Goodrich, Holly Duncan (President, MPMHC Foundation), Diane Kazmierski (VP, Managed Care, BayCare), Nick Cardello (Manager, Community Health, MPMHC), Bill Jennings (COO, North Bay Hospital) and Sister Pat Shirley (OSF, Director of Mission (BayCare) on July 12, 1999. Present at the March 13, 2000 meeting were these same individuals, excepting Karen Brown, Jerry Figurski, Pat Korpan, and Debra Kynes, but additionally Phil Beauchamp (President/CEO of MPMHC), Tim McMahon (then Director, MPMHC Cancer Services) and I were in attendance.

8. I am also aware of Morton Plant Mease managerial personnel who had managerial responsibilities at the hospital level including marketing and planning of services other than

those listed in Section II(A) of the FCJ. This occurred throughout the period covered by the FCJ until the process was reorganized in August, 2000 as described below. Each of these individuals assisted in marketing and planning for specific service lines in both hospitals. These individuals (and their titles at the time) are as follows:

a. Director of Cardiology – Robert Lynch;

b. Director of GI, Hemodialysis, and Elder Care – Margie Brusseau;

c. Director of Vascular Services – Tim McMahon (previously Geri Forbes);

d. Director of Women's Services – Marcia Wiseman;

e. Director of Cancer Services – Tim McMahon;

f. Director of Urology – Margie Brusseau;

g. Director of Neurology and Pulmonary Disease - Jeff Friedman;

h. Director, Quality Planning (BayCare) – Bob Costello;

i. Director, Strategic Marketing (BayCare) – Susan Boydell; and

j. VP, Community Affairs (BayCare) – Caroline Goodrich.

In each of these areas, Morton Plant engaged in its own separate decisions regarding marketing and planning. However, these individuals provided support on these issues at both Morton Plant and Mease. Moreover, on a number of occasions marketing or planning activities were either coordinated with respect to particular service lines or confidentiality was not preserved as between Morton Plant and Mease. This was true of cardiology and cancer care (from 1994 until early 2000). A number of pieces of promotional literature were used throughout the period at both Morton Plant and Mease. Additionally, MPMHC physician committees existed with respect to cancer (from November 1997 until late 1999) and cardiology

(from 1994 until early 2000). These committees addressed medical issues, but also from time to time provided input with respect to marketing and/or planning issues.

9. I am aware of the following possible violations of the FCJ that have occurred since entry of the Enforcement Order:

a. In August, 2000, Ned Kitchen (Decision Support Manager, BayCare Finance Dept.), disclosed charge information regarding Morton Plant and Mease hospitals to personnel at both hospitals. This occurred due to Mr. Kitchen's use of an email list that included personnel from both hospitals. The problem was immediately discovered, and the personnel who should not have received the information were instructed to eliminate the information from their system. Mr. Kitchen has been counseled, has been warned not to make such disclosures in the future, and has been instructed not to forward pricing or other sensitive information to a group that includes personnel from both hospitals.

b. In August, 2000, Robert Lynch (now Director of Cardiology at Morton Plant), sent out an email discussing possible marketing of biventricular pacing devices. The Director of Nursing at Mease was one recipient of the e-mail. Mr. Lynch has been counseled, received a warning and instructed that no such discussion should occur as between Morton Plant personnel and Mease personnel.

10. Prior to the establishment of the Compliance Committee and implementation of new procedures, some possible violations concerning charges for services occurred:

a. On December 14, 1999, a recommendation to set one charge for screening mammograms at all Morton Plant and Mease facilities was made. The price of $90 for this service was to be effective January 1, 2000. This information was

distributed in a message by Lori Cohen (Director, Morton Plant Mease Health Services ("MPMHS") Patient Accounts) to Ned Kitchen, Karen Burroughs (Manager General Accounting - MPMHC), Mary Carpenter (Interim Director, Patient Accounting, MPMHC), Colette Bogart (Manager Managed Care - Mease), Brant Campbell (Project Manager - MPMHS), Linda Sutherland (Manager, Financials - MPMHS), Angela Shellenberger (Patient Financial Coordinator - MPMHS), Audrey Jonelis (PHO Claims Team Leader), Dana Holder (Director of Contracting - BayCare), Mary Herrmann (Hospital Contract Coordinator - BayCare), Connie McMullen (Manager, MPMHC Business Health Services), Tim McMahon, Lily Ho-Pehling (MPMHC Director, Imaging Services), Ken Fazzino (MPMHC, Director Imaging Services), Brian Matson (Director, Bardmoor Outpatient Center), Nancy Burden (Director, Trinity Outpatient Center), Nancy Wheeling (Director, East Lake Outpatient Center), Tom Maloney (Manager, MPMHC Imaging – Schedule/Film), Kandy Swanson (Manager, MPMHC Imaging - Patient Access Services), Jocelyn Lontok (Manager, MPMHC Imaging - Patient Access Services), Lara Shane (VP, MPMHC Ambulatory Services – Resigned 05/26/00), Martine Saber (Director, Admitting – MPMHC), and Diane Higgins (Patient Accounts Manager - MPMHC). The price was recommended based on a determination of what was a "below market" rate. The recommendation was made by Lara Shane.

b. Jo Bean, Director of Laboratory Services, Morton Plant Mease, recommended laboratory prices at both Mease and Morton Plant for those procedures which were referred out to reference laboratories. For such procedures, a standard mark-

up (the same for Morton Plant and Mease) was applied. This has been done through the period covered by the FCJ until August, 2000.

c. Identical charges were recommended by Geri Forbes (Director of Diabetes), for outpatient diabetes procedures in the 1995 – 2000 period prior to the summer of 2000. These charges were set at median levels found in surveys of prices for Florida and nationally.

d. Tom Malinowski, a manager for cardiology at Mease, who was involved in setting charges at Mease, was present when recommended cardiology charges were prepared at North Bay, though he did not participate in the actual decisions.

e. Celia Larimore recommended surgical charges at Mease in 1994 with knowledge of Morton Plant's charges. Since that time, until August, 2000, she has recommended charges for new plastic surgery procedures at Mease after a review of Morton Plant's corresponding procedures.

f. In approximately 1997, Robert Lynch, then Director of Cardiology for Morton Plant Mease, recommended cardiology charges at Mease Countryside. Mr. Lynch was also responsible for recommended cardiology charges at Morton Plant. After 1997, cardiology charges at Mease Countryside were changed pursuant to Mease Board directives. However, Mr. Lynch did recommend that no charges should be increased for echocardiograms at any time.

None of these items relates to managed care pricing. Very few patients pay charges. I believe that the possible violations were limited to the above based on (a) a comparison of Morton Plant and Mease charges conducted by counsel, (b) the interviews conducted for the Compliance

Committee and (c) the fact that overall charge levels were set independently by Morton Plant each year, without any knowledge of the actions (if any) taken by Mease.

11. The Morton Plant Mease Board Finance Committee and Medical Equipment Committee recommended major capital expenditures by Morton Plant and Mease throughout the period covered by the FCJ until August 2000. Additionally, approval of operating budgets for MPMHC, Morton Plant and Mease occurred through a budgetary process including recommendations by the MPMHC Finance Committee. Final decisions were made in each case by the applicable entity. While Morton Plant and Mease initially developed their own budgets, and made their own budget determinations regarding volume and service issues, these issues were discussed from time to time in the budget recommendation process. As a result, some discussions occurred as part of the coordinated budget process that may have implicated marketing or planning issues. There are no specific records of such discussions, and therefore I cannot be precise as to any specific discussions or when they occurred.

12. Certain community education activities were undertaken by MPMHC. This included the MPMHC Health Education Center and women's and children's education (which involved education about prenatal care). While these activities were not labeled as marketing, and served the mission of MPMHC to improve health and benefit the community, they could be viewed as having as one purpose or effect marketing benefits.

13. I became aware of these possible violations in the following manner. In order to determine the extent and limits of possible violations, several procedures occurred. All personnel with management responsibility concerning marketing, planning, charges, or particular patient care services at Morton Plant, Mease, and Morton Plant Mease were interviewed by counsel. All personnel employed by these entities who were involved in managed care

contracting were also interviewed by counsel. Board and board committee minutes previously produced to the Department of Justice and the State of Florida were reviewed, as were a sampling of minutes and agendas for other committees. Additionally, a file search was performed of management personnel with responsibility for overall management of Morton Plant or North Bay hospitals, Mease hospitals or Morton Plant Mease, or with management responsibility for marketing, planning, key finance functions, or major patient care services. Files containing information relating to charges were specifically examined. Any suspected violations that were uncovered were investigated as necessary through further interviews. The results of this investigation were reported to the Morton Plant Compliance Committee.

14. I was aware of the matters referred to in ¶¶ 4a, c, d, f, g and h, 6, 7, 8, 9b, 11 and 12 at the time these activities were occurring. I do not recall being aware of the other items listed above until I learned of these occurrences after compliance reports from counsel. I was not aware that these activities were potential violations of the FCJ until counsel instructed us otherwise as part of the compliance review described above, and the detailed training sessions described below.

15. Morton Plant has taken a number of steps to assure that violations will not occur in the future. Separate training sessions have been held with the boards at each hospital and Morton Plant Mease, senior management of each entity, lower level management of each entity, and all personnel with responsibility for managed care contracting, to provide them with a better understanding of the requirements of the FCJ and Enforcement Order, to explain the nature of past violations, so that they would not recur, and to establish a different process and structure going forward. Multiple meetings were held with personnel with responsibilities including marketing or planning, with Board leadership and with senior management. Staff members have

been encouraged to ask questions of counsel if they have any uncertainty about the requirements for compliance with the FCJ.

16. The personnel who previously had management responsibility including marketing or planning and were employees of Morton Plant Mease now are employees of only either Morton Plant or Mease, with their reporting and other responsibilities limited to that entity, except with respect to certain services referred to in Section II(A) of the FCJ. No BayCare personnel have any responsibility for marketing or planning with respect to Mease, with such exceptions. Each of these persons has received training on the requirements of the FCJ and Enforcement Order, both in a large group, in small group sessions, and (in many cases) in numerous one on one discussions with counsel. Each has signed or has received and will shortly be signing a confidentiality agreement or agreements to further assure future compliance.

17. All promotional materials have been edited or eliminated so that services not referred to in Section II(A) of the FCJ are not being marketed through these materials by Morton Plant Mease.

18. The Morton Plant Mease, Morton Plant and Mease Bylaws have been amended and/or Board resolutions have been approved, to eliminate any role for the Morton Plant Mease Community Affairs Committee relating to marketing or planning; to eliminate any delegation of functions by Morton Plant or Mease to the Morton Plant Mease Finance Committee; and to prohibit any involvement by the Morton Plant Mease board in managed care, pricing, marketing or planning, except as permitted by the FCJ. The Morton Plant Mease Finance Committee and Medical Equipment Committee no longer review capital expenditures relating to non-partnership services. The Morton Plant Mease Finance Committee is no longer involved in recommending operating budgets for Morton Plant and Mease, and the Morton Plant and Mease operating

budgets are established and reviewed on an entirely separate basis for each hospital, and by each hospital's board.

19. Public education activities have been separated out, so that they are being conducted by Morton Plant and/or Mease (separately and individually), and not by MPMHC.

20. Any joint physician committees are now foregoing any discussion or comment regarding marketing or planning issues.

21. A process has been established whereby counsel reviews the agendas of each of the three boards prior to each meeting to assure that inappropriate matters are not discussed.

22. All Morton Plant Mease personnel who had previously had managerial responsibility including marketing or planning have been instructed to purge their files of any materials relating to marketing or planning with respect to the entity for which they will have no longer have responsibilities.

23. All personnel with responsibility for recommending charges have been instructed that they cannot be involved in decisions regarding, or possess information concerning, charges at both Morton Plant and Mease.

24. Confidentiality Agreements have been prepared, approved, circulated and have been or are now being signed to assure that marketing, planning, pricing and managed care information will be kept highly confidential as between Morton Plant and Mease.

25. All other steps specifically required by the Court's Enforcement Order, including training and circulation of documents, have been followed.

26. I do not believe that any of the possible violations discussed above caused any anticompetitive harm. Very few patients pay charges, and I do not believe that any of the actions described above resulted in charges above competitive levels. According to the Florida Agency

for Health Care Administration data, Morton Plant and each Mease Hospital in 1999 had gross revenues per adjusted admissions (based on charges) lower than all but one Pinellas County hospital, and (in each case) more than 25% below the county-wide average. I believe that all Morton Plant charges and prices are competitive; no payor has sought to rescind any contract when provided with that opportunity pursuant to the Enforcement Order. I do not believe that any of the actions described above were undertaken in order to harm anyone; Morton Plant has consistently acted in order to provide the best care at the lowest cost.

FURTHER AFFIANT SAYETH NOT.

HARREL ZIECHECK

Subscribed and sworn to before me
this 26 day of September, 2000

Allen H. Fletz

Notary Public,
County of Pinellas State of Florida
My commission expires:

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