

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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

**MOTION AND
STIPULATION FOR ENTRY OF AN ENFORCEMENT ORDER**

The United States of America, the State of Florida, Morton Plant Hospital Association, Inc., formerly known as Morton Plant Health System, Inc. (“Morton Plant”), the Trustees of Mease Hospital, Inc. (“Mease”), and Morton Plant Mease Healthcare, Inc. (“MPMHC”), hereby stipulate and agree to the entry of the attached Enforcement Order pursuant to ¶ X of the Final Consent Judgment (“FCJ”) entered in this action on September 29, 1994, and extended, pursuant to ¶ XI of the FCJ, on September 29, 1999.

The parties further stipulate and agree as follows:

1. Morton Plant and Mease hereby admit that they violated provisions of the FCJ through the following business activities.

a. Violations of ¶ V, relating to the bona fide Partnership

- 1) Paragraph V(B) of the FCJ permits Morton Plant and Mease to create a bona fide partnership (the “Partnership”) to produce outpatient, specified inpatient, and certain administrative services. With limited exceptions, the Partnership is to sell all such services back to Morton Plant and Mease exclusively, and the hospitals are then to compete in the sale of these services to third parties. By requiring the Partnership to sell these services exclusively to Morton Plant and Mease for subsequent resale to third parties, competition in the sale of these services is to continue despite their joint production. Between 1994 and 2000, however, the Partnership sold these outpatient services directly to managed care plans and others, in violation of the FCJ.
- 2) Paragraph V(C) of the FCJ prohibits executives of the Partnership from discussing managed care contracting or the marketing or pricing of any services for Morton Plant or Mease. This provision was violated during various meetings in which Partnership executives discussed managed care contracting with representatives of the hospitals. At several of these meetings, certain Partnership executives gave identical directives to each of the hospitals on managed care contracting goals and objectives, coordinating Morton Plant’s and Mease’s managed care contracting activities in

violation of the FCJ.

- 3) Paragraph V(I) of the FCJ requires the Partnership to establish adequate protections to keep information concerning pricing, managed care contracts, negotiations with managed care plans, and marketing and planning of Morton Plant and Mease separate and to insure that the information of one hospital is not transmitted to or received by the other hospital, whether directly or indirectly. On various occasions, however, Partnership personnel transmitted information and recommendations on managed care contracting and pricing to both hospitals and coordinated the sale of services to various managed care plans, in violation of the FCJ.

b. Violations of ¶ VI, relating to Independent Activities

- 1) Paragraph VI(A) of the FCJ requires Morton Plant and Mease to continue as separate and competing corporate entities. Marketing, pricing, and managed care negotiating and contracting decisions must all be conducted independently. As discussed above, the hospitals, on various occasions, used the Partnership to share competitively sensitive information, coordinate managed care contracting decisions, and jointly sell certain services, all in violation of the FCJ.
- 2) Paragraph VI(B) of the FCJ requires Morton Plant and Mease to price and sell their services, including Partnership Services, in active

competition with each other, and to independently market and price their services. With limited exceptions, they are not permitted to discuss, communicate, or exchange with each other information relating to the marketing, pricing, negotiating, or contracting of any patient or administrative services. Following entry of the FCJ, however, the hospitals on various occasions took direction from the Partnership regarding the marketing and pricing of their services, used the Partnership as a means of selling services jointly, and shared contracting information with each other as well as with other hospitals in Pinellas County, through their participation in the BayCare Health Network, all in violation of the FCJ.

- 3) Paragraph VI(D) of the FCJ requires Morton Plant and Mease to negotiate and contract independently with health care purchasers. They are permitted to contract with the same purchasers and to enter into similar, but separate, contracts with these purchasers. However, on various occasions Morton Plant and Mease simultaneously negotiated identical contracts with the same managed care plans, using the Partnership to coordinate and obtain identical provisions and rates, all in violation of the FCJ.

c. Violations of ¶¶ VII-VIII, relating to the Compliance Program and Certifications

- 1) Paragraph VII(C) of the FCJ requires Morton Plant and Mease to annually brief their officers, directors, trustees, and administrators

on the meaning and requirements of the FCJ, penalties for its violations, and their duties under the antitrust laws. Though the hospitals provided some form of briefing at various points after the entry of the FCJ, such briefings did not fully or adequately explain the requirements of the FCJ, failing to prevent the violations described herein.

- 2) Paragraph VII(D) of the FCJ requires Morton Plant and Mease to obtain from their respective officers and administrators an annual certification that s/he has read, understood, and agrees to abide by the FCJ and is not aware of any violations of this FCJ. While the hospitals obtained a form of compliance certification from the relevant individuals, these certifications did not, in all cases, provide for an affirmation, as called for by the FCJ, that the individual was not aware of any violations of the FCJ.

- 3) Paragraph VIII(B) of the FCJ requires Morton Plant and Mease to certify annually to the United States and the State of Florida that they have complied with ¶ VII's Compliance Program. The hospitals made these certifications, but did so falsely insofar as (1) they had failed to obtain the proper certifications from certain officers and administrators, and (2) they did not inform the United States or the State of Florida of the violations they had discovered

or reasonably should have discovered as early as 1996.

2. The United States, the State of Florida, Morton Plant, Mease, and MPMHC hereby stipulate and agree that this Motion and Stipulation and the attached Enforcement Order are an appropriate and complete disposition with respect to each of the violations of the FCJ described above.

3. Morton Plant, Mease, and MPMHC hereby further stipulate and agree to be bound by the attached Enforcement Order pending entry of that Order (except as otherwise provided) by this Court.

4. In the event that the Court declines to enter an Enforcement Order in the form attached hereto, this Motion and Stipulation and the attached Order shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other

proceeding, including without limitation the ability to assert additional claims or defenses or to dispute some or all of the matters asserted herein.

Dated: June 28, 2000

MORTON PLANT HOSPITAL ASSOCIATION,
INC.

_____/S/_____
HARREL ZIECHECK, Chief Operating Officer
Morton Plant Hospital Association, Inc.

UNITED STATES OF AMERICA

_____/S/_____
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