

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

ENFORCEMENT ORDER

WHEREAS, following an investigation by the United States and the State of Florida, Morton Plant Hospital Association, Inc. (“Morton Plant”) and the Trustees of Mease Hospital, Inc. (“Mease”) have stipulated and admitted that certain of their activities violated the Final Consent Judgment (“FCJ”) entered by this Court on September 29, 1994, and extended on September 29, 1999;

WHEREAS, the United States, the State of Florida, Morton Plant, and Mease have agreed that the provisions set forth in this Enforcement Order will adequately redress past violations and protect against future violations of the FCJ; and

WHEREAS, the United States, the State of Florida, Morton Plant, Mease, and Morton Plant Mease Healthcare, Inc. (“MPMHC”) have, pursuant to ¶ X of the FCJ, consented to entry

of this Enforcement Order without trial;

NOW, THEREFORE, upon the consent of the parties hereto, it is hereby
ORDERED, ADJUDGED, and DECREED:

I.
DEFINITIONS

As used in this Order:

1. “BayCare Health Network” means BayCare Health Network, Inc., a Preferred Provider Organization (“PPO”) formed by Morton Plant, Mease, and several other hospitals, and all of its directors, officers, employees, agents, consultants, or other persons acting for it or on its behalf.
2. “Final Consent Judgment” or “FCJ” means the Consent Judgment entered by the Court September 29, 1994, and extended pursuant to ¶ XI of the FCJ on September 29, 1999.
3. "Health care provider" means any individual, group, or entity, public or private, that provides health care, including, without limitations, preventive health care, primary health care, in-patient health care services, outpatient services, public health care, and health promotion and education.
4. “Mease” means Trustees of Mease Hospital, Inc. and all of its directors, officers, employees, agents, consultants, or other persons acting for it or on its behalf.
5. “Morton Plant” means Morton Plant Hospital Association, Inc. (formerly known as Morton Plant Health System, Inc.) and all of its directors, officers, employees, agents, consultants, or other persons acting for it or on its behalf.

6. “MPMHC” means Morton Plant Mease Health Care, Inc., a corporation created by Morton Plant and Mease to operate such joint activities as are allowed under the FCJ, and all of its directors, officers, employees, agents, consultants, or other persons acting for it or on its behalf.
7. “Morton Plant Mease PHO” means Morton Plant Mease PHO and all of its directors, officers, employees, agents, consultants, or other persons acting for it or on its behalf.
8. "Payer" means any person or organization that pays for all or part of any expense for health care services provided to another person or group of persons. The term includes, but is not limited to, commercial insurance companies, health maintenance organizations, preferred provider organizations, employers, union trust funds, multiple employer trusts, and corporate or governmental self-insured health benefit plans.
9. “Third-party messenger” means an independent, third party that communicates to a payer any competitively sensitive information it obtains, individually, from a hospital, or communicates, individually, to a hospital any competitively sensitive information it obtains from a payer.

II. APPLICABILITY AND EFFECT

The provisions of this Enforcement Order shall be binding upon Morton Plant, Mease, and MPMHC, and those persons in active concert or participation with any of them who receive actual notice of this Enforcement Order. This Enforcement Order constitutes a full and complete

disposition of Morton Plant's and Mease's violations of the FCJ as outlined in ¶ 1 of the Motion and Stipulation for Entry of An Enforcement Order, and shall be a bar to any proceeding under the antitrust laws (15 U.S.C. §1, et seq., 18 U.S.C. § 401) or any provision of the FCJ by the United States or the State of Florida against Morton Plant, Mease, or MPMHC based upon or arising out of (i) any of the admitted violations, or (ii) any violation occurring before the entry of this Enforcement Order that was not known -- and which was not reasonably knowable -- by any current officer, director, trustee, administrator, or management employee of Morton Plant, Mease, or MPMHC.

III. CIVIL PENALTY

A. Within two weeks of the entry of this Enforcement Order, Morton Plant and Mease shall reimburse the United States the sum of ninety-six thousand dollars (\$96,000) for fees and costs relating to the investigation into violations of the FCJ. This amount shall be paid 60% by Morton Plant and 40% by Mease.

B. Within two weeks of the entry of this Enforcement Order, Morton Plant and Mease shall reimburse the State of Florida the sum of one hundred thousand dollars (\$100,000) for fees and costs relating to the investigation into violations of the FCJ. This amount shall be paid 60% by Morton Plant and 40% by Mease.

C. Within two weeks of the entry of this Enforcement Order, Morton Plant and Mease shall deliver to the State of Florida or its designee a civil penalty of three hundred thousand dollars (\$300,000), to be paid 60% by Morton Plant and 40% by Mease. This penalty shall be paid by certified checks of: (i) one hundred-fifty thousand dollars (\$150,000.00) made payable to

Greenwood Community Health Center, Inc., Clearwater FL; (ii) seventy-five thousand dollars (\$75,000.00) made payable to Homeless Emergency Project, Inc., Clearwater, FL; and (iii) seventy-five thousand dollars (\$75,000.00) made payable to Clearwater Free Clinic, Clearwater, FL. Neither Morton Plant nor Mease shall exert any influence over the money's use, and the names of Morton Plant and/or Mease shall in no way be affiliated with the provision of health services which results from the payment of this penalty. This amount shall not be deemed a deductible expense for purposes of calculating either Morton Plant's or Mease's income taxes, as provided for in 26 U.S.C. § 162(f), or any comparable provision of Florida's or any other state's tax code.

IV. ENFORCEMENT PROVISIONS

A. Morton Plant and Mease shall immediately cease and shall not engage in the joint use of third-party messengers for contracting with any payer. All contracting with payers by Morton Plant and Mease shall be conducted independently, without any coordination between, or joint action by, them.

B. No later than thirty (30) days after the entry of this Enforcement Order, Morton Plant and Mease shall each notify all payers with which they contract of this Order and afford them an opportunity to terminate, on thirty (30) days notice, any such contracts entered into, renewed, or amended since September 29, 1994, which are still in effect, excepting only those contracts negotiated on behalf of Morton Plant by BayCare Health System, Inc.

C. Effective immediately, Mease shall cease further contracting with payers through BayCare Health Network. No later than thirty (30) days after the entry of this Enforcement

Order, Mease shall end its affiliation with the BayCare Health Network. No later than thirty (30) days after entry of this Enforcement Order, Mease shall notify all payers with which it contracts through BayCare Health Network of this Order and afford them an opportunity to terminate, on thirty (30) days notice, any such contracts which are still in effect.

D. Notwithstanding the foregoing, Morton Plant and Mease may negotiate and contract with payers on a non-exclusive basis through the Morton Plant Mease PHO pursuant to the provisions of ¶ V(G) of the FCJ, provided that all such contracts shall be for both hospital and physician services and involve substantial risk sharing among participating physicians and hospitals, and provided further that any information provided to the PHO by one of the hospitals shall not be disclosed to the other hospital.

E. As soon as reasonably possible, but in any event no later than ninety (90) days after the entry of this Enforcement Order, MPMHC (i) shall sell, transfer, or assign to Mease all interest in the Eastlake Outpatient Center, Palm Harbor, FL and the Countryside Surgery Center, Safety Harbor, FL, including all tangible and intangible assets necessary for their operation; and (ii) shall sell, transfer, or assign to Morton Plant all interest in Bardmoor Imaging Center, Largo, FL, Diagnostic Imaging Center, Clearwater, FL, Trinity Outpatient Center, New Port Richey, FL, Behavioral Health Management Services, Inc., Tampa, FL, The Harbor Behavioral Health Care Institute, Inc., New Port Richey, FL, and those physician practices owned through Morton Plant Mease Primary Care, Inc. (“MPMPC”), including all tangible and intangible assets necessary for their operation, provided, however, that Morton Plant shall not require, induce, or encourage physicians employed by MPMPC to cease or reduce admissions to Mease. MPMHC shall henceforth be limited to those activities expressly allowed in ¶ V of the FCJ, shall cease all sales

of patient care and administrative services to any purchasers other than Morton Plant and Mease, except those allowed under ¶¶ V(C) and II(A)(10) of the FCJ, and shall take all other steps necessary to fully comply with the FCJ and this Enforcement Order.

F. No later than sixty (60) days after the entry of this Enforcement Order, Morton Plant and Mease shall edit, alter, or eliminate all promotional materials including, but not limited to, signs, billboards, websites, stationary, pamphlets, flyers, and posters, that are distributed or publicized in connection with inpatient, non-tertiary services and that bear the name “Morton Plant Mease Health Care” or “MPMHC.” The name “Morton Plant Mease Health Care” or “MPMHC” shall be used only in connection with the Eligible Services defined in ¶ II(A) and (B) of the FCJ.

V.
COMPLIANCE PROVISIONS

A. No later than fifteen (15) days after the entry of this Enforcement Order, Morton Plant and Mease shall each create an internal Compliance Committee to oversee and coordinate compliance with the FCJ and this Enforcement Order. Morton Plant and Mease shall provide the names of the individuals serving on their respective Compliance Committee to the United States and the State of Florida within thirty (30) days of the entry of this Enforcement Order. The Chief Administrative Officer (“CAO”) of each hospital shall be the Chair of each such Compliance Committee. No individual shall serve on both hospitals’ Compliance Committees.

B. No later than fifteen (15) days after the entry of this Enforcement Order, Morton Plant and Mease shall create and provide to the United States and the State of Florida a written directive setting forth each hospital’s policies regarding compliance with the FCJ and this

Enforcement Order, including the potential disciplinary actions the hospital shall take in the event of a violation, and a description of the procedures to be followed to comply with the FCJ and this Enforcement Order. No later than thirty (30) days after the entry of this Enforcement Order, Morton Plant and Mease shall distribute to each officer, director, trustee, administrator, management employee, and anyone responsible for managed care contracting for each hospital a copy of the FCJ, this Enforcement Order, and the written directive setting forth the hospital's policies regarding compliance with the FCJ and this Enforcement Order. In addition, Morton Plant and Mease shall each inform in writing each officer, director, trustee, administrator, management employee, and anyone responsible for managed care contracting for each hospital that non-compliance with the FCJ or this Enforcement Order shall result, in every instance, in disciplinary action, which may include dismissal, and that non-compliance may also result in conviction for contempt of court and imprisonment and/or fine.

C. No later than thirty (30) days after entry of this Enforcement Order and annually thereafter, Morton Plant and Mease shall each obtain from each person to whom notice is given pursuant to ¶ V.B of this Enforcement Order, a certificate in substantially the following form:

The undersigned hereby (1) acknowledges receipt of the FCJ, Enforcement Order, and a written directive setting forth Morton Plant's [or Mease's] policy regarding compliance with the Enforcement Order; (2) represents that the undersigned has read such FCJ, Enforcement Order, and directive and understands his or her obligations for ensuring compliance with the FCJ and the Enforcement Order; (3) acknowledges that s/he has been advised and understands that non-compliance with the FCJ and/or the Enforcement Order shall result, in every case, in disciplinary measures which may include dismissal, and that such non-compliance may also result in conviction for contempt of court and imprisonment and/or fine; (4) represents and affirms that s/he (a) is not aware of any violations of the FCJ or Enforcement Order occurring after entry of the Enforcement Order

or of any past violations not admitted to in the Motion and Stipulation for Entry of the Enforcement Order, or (b) promptly notified the Compliance Committee of any violations of which s/he has become aware.

All such certifications shall be retained by Morton Plant or Mease, and be available for inspection pursuant to ¶ IX of the FCJ.

D. No later than thirty (30) days after the entry of this Enforcement Order, Morton Plant and Mease shall distribute to each payer with which each has a contract a copy of this Enforcement Order and the written directive setting forth each hospital's policies regarding compliance with the Enforcement Order required by ¶ V.B of this Order. No later than thirty (30) days after the entry of this Enforcement Order, the FCJ, this Enforcement Order, and the hospital's written directive shall also be provided to any person or entity with whom Morton Plant and/or Mease enters into negotiations for a managed care contract.

E. No later than thirty (30) days after entry of this Enforcement Order, the Compliance Committee of each hospital shall create an internal audit work plan outlining how the audits are to be conducted and scheduling two internal compliance audits each year. Each respective Compliance Committee shall provide its work plan to the United States and the State of Florida within thirty (30) days of the entry of this Enforcement Order and shall execute the internal audits as scheduled. In addition, each Compliance Committee shall file an affidavit summarizing the results of each audit with the United States and the State of Florida within fourteen (14) days of the completion of each audit.

F. No later than thirty (30) days after the entry of this Enforcement Order, Morton Plant and Mease shall each modify the training of all officers, directors, trustees, administrators, management employees, and anyone responsible for managed care contracting to include such

training as may be required by the FCJ, this Enforcement Order, and the directives of the Compliance Committee.

G. No later than sixty (60) days after the entry of this Enforcement Order and annually thereafter Morton Plant and Mease shall each submit to this Court, with copies to the United States and the State of Florida, certifications signed under oath by each hospital's CAO that: (1) all steps required by this Enforcement Order and the FCJ have been accomplished; (2) the Compliance Committee has made a reasonable, good faith effort to investigate any suspected violations of this Enforcement Order or the FCJ of which it has become aware; (3) he or she is not aware of, nor has been informed of, any violations of either this Enforcement Order or the FCJ other than those admitted to in the Motion and Stipulation for Entry of the Enforcement Order; and (4) each managed care contract entered into from the date of entry of this Enforcement Order has been independently negotiated and priced, with no information shared between Morton Plant and Mease, except as allowed under ¶ IV.D of this Enforcement Order. Any suspected violations shall be identified, and the nature of such suspected violations -- and any investigation conducted by the hospitals -- shall be described in the Certification.

VI. PENALTIES FOR VIOLATIONS

If, after entry of this Enforcement Order, Morton Plant, Mease, or MPMHC violate the FCJ or this Enforcement Order, the Court may impose a financial penalty for such a violation in such amount as the Court deems reasonable in light of all circumstances. Such violations may be established by this Court by a preponderance of the evidence after notice and hearing.

VII.
VISITORIAL RIGHTS AND OTHER RELIEF PRESERVED

A. Except as provided in ¶ II of this Enforcement Order, nothing in the Enforcement Order shall bar the United States or the State of Florida from seeking, or the Court from imposing, on Morton Plant, Mease, or MPMHC any other relief available under any applicable provision of law for violation of the FCJ or this Enforcement Order.

B. The monitoring and visitation provisions of ¶ IX of the FCJ shall apply to the activities of Morton Plant and Mease mandated under this Enforcement Order.

VIII.
DURATION OF ENFORCEMENT ORDER AND FCJ

A. Except as provided in the first sentence of ¶ V.H of the FCJ, Morton Plant and Mease have stipulated and agreed to waive any right to seek modification or termination of either this Enforcement Order or the FCJ until three years after the date that the Motion and Stipulation for Entry of An Enforcement Order is filed with the Court.

B. Following the expiration of the three-year period set forth in ¶ VIII.A of this Enforcement Order, Morton Plant and Mease may request that the United States and the State of Florida join in a Motion to the Court to terminate or modify the Enforcement Order and/or the FCJ. At that point, the United States and the State of Florida shall expeditiously examine existing market conditions in the Tampa Bay region. If, in their sole discretion, the United States and the State of Florida determine that there is adequate competition in the region, they shall join in the hospitals' Motion for modification and/or termination. In the event the United States or the State of Florida do not join in such motion, Morton Plant and Mease shall be free to seek such relief

from this Court, and the parties agree to seek its expeditious resolution. This Enforcement Order shall otherwise terminate on September 29, 2004

IX.
EFFECT OF ENFORCEMENT ORDER

A. This Enforcement Order is intended to ensure Morton Plant's and Mease's full compliance with the FCJ and to make available civil penalties and other remedies for any future violation of the FCJ or this Enforcement Order .

B. Except as otherwise provided, nothing in this Enforcement Order shall be construed as limiting, modifying, or affecting Morton Plant's or Mease's obligation to comply with all provisions of the FCJ.

X.
RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Enforcement Order to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Enforcement Order, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

Hon. Steven D. Merryday
United States District Court Judge
Middle District of Florida

DATED: _____