

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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UNITED STATES OF AMERICA and
STATE OF FLORIDA,

Plaintiffs,

v.

MORTON PLANT HEALTH SYSTEM, INC. and
TRUSTEES OF MEASE HOSPITAL, INC.,

Defendants.

Civil No. 94-748-CIV-T-23E

Judge Steven D. Merryday

Entered: September 29, 1994

FINAL CONSENT JUDGMENT

Plaintiffs, the United States of America and the State of Florida, having filed their Verified Complaint on May 5, 1994, and Plaintiffs and Morton Plant Health System, Inc. and Trustees of Mease Hospital, Inc., by their respective attorneys, having consented to the entry of this Final Consent Judgment without trial or adjudication of any issue of fact or law, and without this Final Consent Judgment constituting evidence against or admission by any party with respect to any issue of fact or law;

NOW, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law, it is hereby ORDERED, ADJUDGED AND DECREED:

I.

JURISDICTION

This Court has jurisdiction of the subject matter and each of the parties to this action. The Verified Complaint states a

claim upon which relief may be granted against Morton Plant Health System, Inc. and Trustees of Mease Hospital, Inc. under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II.

DEFINITIONS

As used in this Final Consent Judgment:

(A) "Eligible Partnership Patient Care Services" means the following patient care services that Morton Plant and Mease may elect to own, manage, operate or provide by the Partnership described herein:

- (1) all patient care services provided by Morton Plant or Mease on an outpatient basis that are generally capable of being provided outside of a general acute care hospital;
- (2) open-heart surgery and/or services or procedures that require the immediate availability of an open-heart surgery unit;
- (3) robotically assisted prosthetic implantation and special spinal instrumentation procedures involving the insertion of multiple rods in the spinal cord;
- (4) stem cell procedures, advanced linear accelerator equipment and procedures, and HDR brachy therapy;
- (5) stereotactic radio therapy;

- (6) inpatient and outpatient diagnostic and therapeutic radiology services (e.g., CAT scans, MRI, X-ray, ultrasound, nuclear angiography);
- (7) inpatient and outpatient laboratory services;
- (8) neonatal level III services;
- (9) inpatient and outpatient mental health services; and
- (10) home health care, home infusion services, durable medical equipment, rehabilitative services, skilled nursing, retirement facilities and long-term care.

(B) "Eligible Partnership Administrative Services" means the following administrative services that Morton Plant and Mease may elect to own, manage, operate or provide by the Partnership described herein:

- (1) human resources (except management positions at the hospital level with responsibility for management, marketing, planning, pricing or managed care contracting);
- (2) medical staff organization and development, including medical staff development and recruitment, physician organization structure, advising on practice acquisition, governance and credentialing;
- (3) information services;
- (4) telephone and other communication services;
- (5) accounting, billing and collection;

- (6) housekeeping;
- (7) medical records;
- (8) materials management and plant maintenance;
- (9) support services for charitable foundations; and
- (10) all miscellaneous services not related to patient care and not exceeding an expenditure of \$250,000 annually.

(C) "Independent Services" means all services other than those carried out by the Partnership under this Final Consent Judgment.

(D) "Managed Care Plan" means a health maintenance organization, preferred provider organization, or other health services purchasing program that uses financial or other incentives to prevent unnecessary services and includes some form of utilization review.

(E) "Mease" means the Trustees of Mease Hospital, Inc. and all subsidiaries and affiliates.

(F) "Morton Plant" means Morton Plant Health System, Inc. and all subsidiaries and affiliates.

(G) "Partnership" means the nonprofit, tax-exempt organization that Morton Plant and Mease may create and operate in accordance with this Final Consent Judgment.

III.

APPLICABILITY

This Final Consent Judgment applies to Morton Plant and Mease, to the Partnership created by them, to Morton Plant's and

to Mease's officers, directors, trustees, administrators, agents, employees, successors and assigns and to all other persons in active concert or participation with any of them who receive actual notice of this Final Consent Judgment pursuant to F.R.C.P. 65(d).

IV.

PROHIBITED CONDUCT

Morton Plant and Mease shall not consummate their agreement to consolidate as set forth in their Letter of Intent, dated October 19, 1993, or any other agreement to merge, consolidate, or combine, except in accordance with the terms of this Final Consent Judgment.

V.

BONA FIDE PARTNERSHIP

Morton Plant and Mease may enter into a Partnership in which they consolidate and jointly operate certain patient care services and administrative services under the following conditions:

(A) Morton Plant and Mease may agree to consolidate and jointly operate any Eligible Partnership Patient Care Services and any Eligible Partnership Administrative Services.

(B) The Partnership may own and operate any Eligible Partnership Patient Care Service and any Eligible Partnership Administrative Service and may provide such service to Morton Plant and Mease. The Partnership shall sell each service to Morton Plant and Mease on the same terms and conditions in an

amount equal to cost. The Partnership shall conduct an annual cost accounting.

(C) Morton Plant and Mease may appoint members to a Partnership board, which individuals may be members of each hospital's board. Executives at Morton Plant and Mease may also serve as executives of the Partnership and on the boards of their respective hospitals and of the Partnership. The Partnership board will govern the services provided by the Partnership. The Partnership board and its executives may not discuss Independent Services, managed care contracting for Morton Plant or Mease, or the marketing or pricing of any services, including Eligible Partnership Patient Care Services or Eligible Partnership Administrative Services, with the following exception: the Partnership may market and price those services set out in Paragraph II(A)(10) as long as Morton Plant and Mease continue their present practice of providing their patients and physicians with information on other providers of these services in the market. The Partnership board may request Morton Plant and Mease to contribute capital to the Partnership, but each hospital shall exercise its own independent judgment on how much capital to contribute.

(D) Morton Plant and Mease shall provide plaintiffs with written notification of their intent to consolidate and jointly operate any additional or new services (such as pediatrics and neonatal level II services) through the Partnership under the terms of this Final Consent Judgment. Morton Plant and Mease shall also provide any information reasonably necessary for

plaintiffs to assess the competitive impact of adding such services to the Partnership. Morton Plant and Mease may consolidate and jointly operate the additional or new services unless either plaintiff provides a written objection within 120 days of receiving the necessary information. Notwithstanding the foregoing, Morton Plant and Mease may jointly operate through the Partnership any new service not currently provided by Morton Plant or Mease by providing plaintiffs with at least 90-days' notice, so long as the new service is a specialized inpatient procedure commonly recognized in the medical community as "tertiary" or higher, and is performed only by physician subspecialists with specialized support staff and expensive equipment.

(E) Morton Plant may lend or grant Mease up to \$21 million for Mease's planned expansion under terms preventing Morton Plant from obtaining any control or leverage over Mease's management or operations.

(F) Morton Plant, Mease and the Partnership may become obligated parties, guarantors or co-makers on debt instruments and the assets of Morton Plant, Mease and the Partnership may be pledged as security for such debt instruments so long as all such obligations are approved separately by Morton Plant and Mease. Neither Morton Plant nor Mease shall unreasonably withhold consent to, impose conditions on, or attempt to influence the use of funds obtained by the other hospital through such financing for Independent Services. In the event that Morton Plant or Mease believes the other has unreasonably withheld such consent,

the matter shall be submitted to binding arbitration under the American Arbitration Association Rules.

(G) Nothing in this Final Consent Judgment is intended to prevent Morton Plant, Mease and/or the Partnership from participating in lawful integrated delivery networks such as accountable health partnerships, physician organizations and physician networks of their medical staff; provided that participation decisions shall be made independently by Morton Plant, Mease and the Partnership.

(H) In the event that federal or state legislation enacted subsequent to the entry of the Final Consent Judgment permits conduct prohibited by this Judgment, Morton Plant and Mease may move for and plaintiffs will reasonably consider an appropriate modification of the Final Consent Judgment. This provision in no way limits Morton Plant's or Mease's right to seek any modification of this Final Consent Judgment.

(I) The Partnership shall 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 directly or indirectly. Adequate protections shall include, at a minimum, confidentiality agreements for employees with access to such information and protocols for preparation of separate reports for Morton Plant, Mease, and the Partnership.

(J) The Partnership may make any lawful acquisition of physician practices. However, in the event that a practice is acquired that admits patients to either hospital for Independent Services, Morton Plant and Mease shall allow each such physician to determine in his or her sole discretion to which hospital to admit such patients.

VI.

INDEPENDENT ACTIVITIES

(A) Morton Plant and Mease shall continue as separate and competing corporate entities, with separate Boards of Trustees and executive management, and shall separately own and operate their respective Independent Services. Marketing, pricing, and managed care negotiating and contracting decisions shall remain Independent Services to be considered only in each hospital board's respective meeting. Each board shall adhere to a separate agenda and will record such meeting in separate minutes.

(B) Morton Plant and Mease shall each price and sell its services, both those owned and operated separately and those purchased from the Partnership, in active competition with each other. Morton Plant and Mease shall each exercise its own independent judgment on how to market and price its patient care services and shall not discuss, communicate, or exchange with each other or any other hospital information relating to the marketing, pricing, negotiating, or contracting of any patient care service, including those purchased from the Partnership.

(C) Morton Plant or Mease shall be free to offer any patient care service or administrative service provided through the Partnership independently and in competition with any other provider and may end its provision of any such service through the Partnership.

(D) Morton Plant and Mease shall negotiate and contract independently with health care purchasers such as Managed Care Plans. Morton Plant and Mease may contract with the same Managed Care Plan or any other health care purchaser so long as they do so independently; provided, that Morton Plant and Mease may independently enter into similar but separate contracts with the same Managed Care Plan.

VII.

COMPLIANCE PROGRAM

Morton Plant and Mease shall maintain an antitrust compliance program, which shall include:

(A) distributing within 60 days from the entry of this Final Consent Judgment, a copy of the Final Consent Judgment and Competitive Impact Statement to all officers, directors, trustees and administrators;

(B) distributing in a timely manner a copy of the Final Consent Judgment and Competitive Impact Statement to any person who succeeds to a position described in Paragraph VII(A);

(C) briefing annually those persons designated in Paragraph VII(A) on the meaning and requirements of this Final Consent

Judgment, penalties for violation thereof and the antitrust laws, including potential antitrust concerns raised by hospitals;

(D) obtaining from the officers and administrators an annual written certification that he or she has read, understands and agrees to abide by this Final Consent Judgment and is not aware of any violation of this Final Consent Judgment; and

(E) maintaining for inspection by plaintiffs a record of recipients to whom this Final Consent Judgment and Competitive Impact Statement have been distributed.

VIII.

CERTIFICATIONS

(A) Within 75 days after the entry of this Final Consent Judgment, Morton Plant and Mease shall each certify to plaintiffs whether it has made the distribution of this Final Consent Judgment in accordance with Paragraph VII(A) above.

(B) For five years after the entry of this Final Consent Judgment, on or before its anniversary date, Morton Plant and Mease shall each certify annually to plaintiffs whether it has complied with the provisions of Paragraph VII.

IX.

PLAINTIFFS' ACCESS

For the sole purpose of determining or securing compliance with this Final Consent Judgment, and subject to any recognized privilege, authorized representatives of the United States Department of Justice or the Office of the Attorney General,

State of Florida, upon written request of the Assistant Attorney General in charge of the Antitrust Division or the Attorney General of the State of Florida, respectively, shall on reasonable notice be permitted:

- (A) access during regular business hours of Morton Plant and Mease to inspect and copy all records and documents relating to any matters contained in this Final Consent Judgment;
- (B) to interview Morton Plant and Mease officers, directors, trustees, administrators, and employees, who may have counsel present, concerning such matters; and
- (C) to obtain written reports from Morton Plant and Mease relating to any of the matters contained in the Final Consent Judgment.

X.

JURISDICTION RETAINED

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Consent Judgment 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 Final Consent Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

XI.

EXPIRATION OF FINAL CONSENT JUDGMENT

This Final Consent Judgment shall expire 5 years from the date of entry; provided that, before the expiration of this Final Consent Judgment, either plaintiff, after consultation with Morton Plant and Mease and in each plaintiff's sole discretion, may extend the Judgment for an additional five years.

XII.

PUBLIC INTEREST DETERMINATION

Entry of this Final Consent Judgment is in the public interest.

Dated: *September 28, 1994 in Tampa, Florida.*

Steven D. Merryday

Steven D. Merryday
United States District Judge