

UNITED STATES DISTRICT COURT FOR  
THE MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WOMAN'S HOSPITAL FOUNDATION  
and WOMAN'S PHYSICIAN HEALTH  
ORGANIZATION,

Defendants.

Civil Action  
No. 96-389-BM2

September 9, 1996

MEMORANDUM IN SUPPORT OF MOTION  
FOR ENTRY OF FINAL JUDGMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, ("APPA"), 15 U.S.C. § 16 (b)-(h), Plaintiff moves for entry of the proposed Final Judgment in this civil antitrust proceeding. The Final Judgment may be entered at this time without further hearing, if the Court determines that entry is in the public interest. A Certificate of Compliance, certifying that the parties have complied with all applicable provisions of the APPA and that the waiting period has expired, has been filed simultaneously with this Court.

I.

Background

This action commenced on April 23, 1996, when the United States filed its Complaint alleging that Defendants Woman's

Hospital Foundation and Woman's Physician Health Organization ("WPHO") violated Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1,2. The Complaint alleges that the Defendants entered into an agreement and took other actions, the purpose and effect of which were, among other things, to reduce competition among obstetrician/gynecologists ("OB/GYNs") and other doctors and prevent or delay the continued development of managed care in Baton Rouge, Louisiana, and to maintain willfully Woman's Hospital's monopoly in inpatient obstetric care.

On the same date, the United States submitted a proposed Final Judgment, a Competitive Impact Statement, and a Stipulation signed by the parties consenting to entry of the proposed Final Judgment. The proposed Final Judgment was revised, by agreement of all parties, in response to a public comment that pointed out an inadvertent mistake in the language of the Decree. The mistake was corrected to reflect the original intent of the parties.<sup>1</sup> The proposed Final Judgment, as revised, contains adequate provisions to prevent further violations of the type upon which the Complaint is based and to remedy the effects of the alleged conspiracy and Woman's Hospital's exclusionary acts. The proposed Final Judgment's injunctions will restore to Baton Rouge consumers of obstetrical services the benefits of competition among obstetrical providers that defendants have eliminated or prevented. The Amended Competitive Impact

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<sup>1</sup>This correction is described in detail in the United States' Response to Public Comments.

Statement explains the basis for the Complaint and the reasons why entry of the proposed Final Judgment will be in the public interest.<sup>2</sup> The Stipulation provides that the proposed Final Judgment may be entered by the Court after completion of the procedures required by the APPA.

## II.

### Compliance with the APPA

The APPA requires a sixty-day period for the submission of public comments on the proposed Final Judgment, 15 U.S.C. § 16(b). In this case, the sixty-day comment period commenced on May 10, 1996, and expired on July 9, 1996. During this period, the United States received comments from a single source on the proposed Final Judgment. The United States filed the public comments and its Response To Public Comments on August 15, 1996. Upon publication of the comments and the Response in the Federal Register on August 22, 1996, the procedures required by the APPA prior to entry of the proposed Final Judgment were completed. The Certificate of Compliance filed by the United States with this Court simultaneously with this Memorandum demonstrates that the requirements of the APPA have been met. It is now appropriate for the Court to make the public interest determination required by 15 U.S.C. § 16(e) and to enter the Final Judgment. The Court will retain jurisdiction to construe, modify or enforce the Final Judgment.

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<sup>2</sup>An Amended Competitive Impact Statement was filed on May 6, 1996. The amendment was not substantive; it simply corrected a reference to the wrong section of the proposed Final Judgment.

III.

Standard of Judicial Review

Before entering the proposed Final Judgment, the Court is to determine that the Judgment "is in the public interest." In making that determination, the Court may consider:

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e). In its Amended Competitive Impact Statement and its Response to Public Comments previously filed with the Court, the United States has explained the meaning and proper application of the public interest standard under the APPA, and incorporates those statements here by reference.

The public, including affected competitors and customers, has had opportunity to comment on the proposed Final Judgment as required by law, and no one has contended that entry of the proposed Final Judgment would as a whole be contrary to the public interest. The additional relief proposed by General Health's comments is not necessary because the proposed Consent Decree, as amended, will provide an effective and appropriate remedy for the antitrust violations alleged in the Complaint. There has been no showing that the proposed settlement

constitutes an abuse of the Department's discretion or that it is not within the zone of settlements consistent with the public interest.IV.

Conclusion

For the reasons set forth in this Memorandum, in the Amended Competitive Impact Statement and in the United States' Response To Public Comments, the Court should find that the proposed Final Judgment is in the public interest and should enter the proposed Final Judgment without further hearings.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Pamela Girardi, hereby certify that copies of the United States' Motion for Entry of Final Judgment and Memorandum In Support of Motion For Entry of Final Judgment in U.S. v. Woman's Hospital Foundation and Woman's Physician Health Organization, Civ. No. 96-389-BM2 were served on the 9th day of September 1996 by first class mail to counsel as follows:

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