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May 30, 1995

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Anne K. Bingaman, Esq.
Assistant Attorney General
Antitrust Division
United States Department of Justice
10th and Constitution Avenues, N.W.
Washington, D.C. 20530

In re: Request for a United States Department of Justice
Expedited Business Review Letter for
Allied Colon & Rectal Specialists

Dear Ms. Bingaman:

Pursuant to the United States Department of Justice's Antitrust Division business review procedure (28 C.F.R. § 50.6) and the Department's pilot expedited business review procedure announced on December 1, 1992 (58 Fed. Reg. 6132 (1993)), our law firm requests that the Department issue a business review response letter relating to its antitrust enforcement intentions for the anticipated health care activities of an independent practice association ("IPA") specializing in colon and rectal surgery in the greater Phoenix, Arizona, area.

In making this request, we understand our affirmative obligation to make a full and true disclosure regarding the proposed business conduct. We base our request upon the best information known to date and upon reasonable estimates of future activity. We verify that we make this expedited business review request in good faith, and we have made a diligent search for information and documents required to be submitted pursuant to 28 C.F.R. § 50.6 and, where possible, have provided complete disclosure of all responsible material. The IPA will implement any suggested modifications that address any antitrust concerns of the Department.

BMD/96179.1/CO125-00001

We hereby disclose information sufficient to show:

1. Name, Address, and Legal Form.

The name of the proposed IPA is "Allied Colon & Rectal Specialists" ("ACRS"). The principal place of business for ACRS is Phoenix, Arizona.¹ ACRS is a non-profit professional association organized under the laws of Arizona.² No part of ACRS's net earnings shall benefit its directors or officers, except for reasonable compensation for services rendered.

2. Persons Expected To Participate.

Seven physicians specializing in colon and rectal surgery are expected to participate in this venture. Participating physicians would be required to file an initial application fee of \$2,500. The governing board would establish annual membership fees. The participating physicians would provide health care to the public in the form of professional services. While ACRS has already been formed, it is not yet active.

3. Purposes And Objectives of the Venture.

ACRS has the following objectives:

To create a health care provider organization with an emphasis on colon and rectal surgery.

To contract or subcontract with other entities such as insurance companies, employers, and other groups for the furnishing of health care services. ACRS, with the assistance of a third-party administrator or other consultant, would negotiate with these organizations to furnish these health care services.

To contract on behalf of ACRS members for health care services, although ACRS may, in the future, establish a management service organization or other integrated delivery system.

¹ The current statutory agent for ACRS is ST Service Company, 2929 North Central, 14th Floor, Phoenix, AZ 85012-2742.

² Although ACRS has organized, it awaits direction from the Department of Justice before engaging in any integrated contracting activities.

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To protect the rights of patients to choose their own physicians and hospitals.

To help physicians from being unfairly eliminated or locked out of health care markets by other competitors.

To assist health care providers in furnishing high-quality, cost-effective and competitive health services within the State of Arizona. ACRS would accomplish this, in part, through the services of a third-party administrator, a utilization management committee, a quality management committee, and a credentials committee.

To offer a mechanism for physicians in creating structures of managed care and providing for risk sharing.

To offer the opportunity for physicians to interact directly with local businesses and employers to offer "bundled" sets of medical and surgical services under a simplified and unified bill.

And to offer the ability for physicians to deal directly, constructively, and efficiently with other managed-care entities.

ACRS anticipates that its primary geographical market would be the Phoenix metropolitan area within Maricopa County and its secondary geographic market to be the entire State of Arizona.

Although interest has been expressed by additional health care providers in other specialties, ACRS will narrow its focus and concentrate its efforts in the area of colon and rectal surgery.

4. Products Or Services.

ACRS would furnish high-quality, cost-effective, and competitive health care services in Maricopa County and the State of Arizona. ACRS would contract on behalf of members for either discounted fee for services with appropriate withholds or for a capitated fee structure that ACRS hopes will be more competitive and more cost effective than other competing health care providers.

5. Extent To Which Members in ACRS Currently Market Services.

Each member of ACRS presently negotiates their own individual contracts with insurance companies, employers, and other organizations. Under ACRS, some future contracting could be done by ACRS, thus allowing for greater efficiency in reducing repetitive contract discussions with multiple parties. ACRS physicians will not have to spend considerable time in negotiating and administering contracts individually, which will, in turn, allow the health care provider to devote more time to delivery of health care. This should simplify matters for the consumer.

6. The Identity And Competitive Significance of Persons Who Participate in the Relevant Product And Geographical Market.

In the State of Arizona there are a total of approximately 8,657 physicians.³ Of these physicians, approximately ten are colon and rectal surgeons as defined under the ACRS proposed structure. ACRS will encompass seven of the nine dedicated colon and rectal surgeon subspecialists in the Phoenix metro area, the area designated in Paragraph 3 as the primary service area of ACRS. Because many other surgeons are qualified and enjoy privileges to perform similar procedures, however, ACRS physicians will enjoy a combined market share (or weighted average on top ten procedures) of only 15% in the Phoenix metro area and 9% for the State of Arizona.

The relevant market area is highly competitive regarding health care, especially in the greater Phoenix, or Maricopa County, area.

7. Restrictions on the Ability of Participants To Compete with the Venture.

As seen in the Provider Membership Agreement (the "Agreement") (Exhibit 4), ACRS is nonexclusive with no limitation on the ability of any member to join other organizations or other competing entities. Paragraph 4.9 of the Provider Membership Agreement specifically provides that "[n]othing in this Agreement shall be construed to restrict the Network or the

³ This number includes 7,810 physicians with M.D. degrees and 847 physicians with D.O. degrees.

Physician from entering other contracts to provide health care services to other plans, patients or employees." Further, Paragraph 3.1 of the Agreement provides that a member may elect not to participate in a contract if "the physician provides written notice to the Network of its election to reject a Plan Contract within five (5) days of the Physician's receipt thereof or of a summary of the material financial terms of such Plan Contract."

8. Restrictions on the Flow of Information from the Venture To Its Members.

ACRS intends to contract with a third-party administrator to assist ACRS in negotiating with various organizations to furnish the health care services noted above. ACRS intends to restrict the flow of information from ACRS to its members. Specifically, any contract with a third-party administrator will contain the following two provisions. The first, which will limit individual members' access to disaggregated information compiled by the administrator, reads:

ACRS shall have the authority to require the third-party administrator ("TPA") to create a data base, prepare statistical analyses, and furnish recommendations to enable ACRS to negotiate contracts for health care and to help carry out the purposes for which ACRS was formed, all consistent with antitrust laws and other applicable federal and state laws. All information obtained by the TPA shall be proprietary and confidential. Each ACRS member agrees that, except for the final statistical analysis and recommendations of the TPA, no member shall have access to any disaggregated information held by the TPA or any accounting firm, actuary, or research firms providing services to the TPA.

The second provision, which specifically prohibits individual ACRS members from having access to patient fee and other financial information, reads:

No ACRS member shall have access to another member's patient fee or pricing information or other financial information, including, but not limited to, salary and fringe benefits for associates or employees. Furthermore, no member shall have access to any data or

information gathered by a TPA as described in Paragraph ____.

9. The Ten Largest Projected Customers for Services Offered By the Venture in the Relevant Geographic Market And an Estimate of Their Annual Purchases.

At this time, it is impossible to predict whether any health care consumers will choose to contract with ACRS and, if so, which entity or entities. The largest consumers of health care services include: Aetna Health Plans, Arizona Physicians IPA, Blue Cross and Blue Shield of Arizona, CIGNA Healthcare of Arizona, FHP Health Care, Humana Health Care Plans, Intergroup of Arizona, Maricopa Foundation for Medical Care, Medicare, and Samaritan Health System. Each of these entities has various health care plans available to consumers, including HMO, PPO, and indemnity insurance plans. A listing of the number of enrollees of the ten largest HMOs in the state were published recently and are attached as Exhibit 6.

10. Requirements for Entry into Any Relevant Product or Geographic Market And the Identity of Persons Believed To Be Positioned To Enter into the Market.

Surgeons providing professional services competitive with those offered by ACRS include general surgeons, allopathic (M.D.) surgeons, and osteopathic (D.O.) surgeons licensed in the State of Arizona, of which approximately 58% practice in Maricopa County.

11. Business Efficiencies that Are Likely To Flow from the Venture.

ACRS's business efficiencies would include:

Each physician member will be relieved of the burden of dealing with provider contracts individually. ACRS will perform the service with the assistance of a third-party administrator.

Through the assistance of a third-party administrator, ACRS can perform services more efficiently and in a more business-like manner. Many of the prospective ACRS members do not have the level of expertise or time necessary to cope with a myriad of provider contracts being negotiated or offered in the relevant market area.

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ACRS, through the assistance of a third-party administrator and other consultants, will track clinical outcomes and be able to more efficiently and economically provide appropriate health care services.

ACRS, through the committee structures and third-party administrator and other consultants, will manage resource utilization and help reduce unnecessary services and help enhance quality care.

ACRS would review the credentials of all members. A committee of ACRS members would be established for this purpose.

ACRS would help ensure that a patient would have a choice of their own physician and would be able to stay with that physician during the course of treatment where possible.

In addition to providing the preceding information, we enclose all:

1. Documents Reflecting the Formation of the Venture.

We have attached Exhibits 1-3 to this letter relating to the formation of ACRS. They include:

Exhibit 1: ACRS's Articles of Incorporation. ACRS filed these Articles with the Arizona Corporation Commission on October 17, 1994. The initial Board of Directors established in the Articles of Incorporation has met and has authorized the request for an expedited business review letter.

Exhibit 2: ACRS's current Bylaws. The Board of Directors adopted the current Bylaws on October 3, 1994.

Exhibit 3: ACRS's Provider Membership Agreement.

2. Documents Concerning the Business Plans Or Strategy for the Venture.

At this time, ACRS does not have a marketing or business plan other than what has been described in this letter.

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3. Documents Prepared within Two Years Reflecting the Business Plans of Any Venture Participant.

At this time, ACRS does not have a marketing or business plan other than what has been described in this letter.

4. Documents Discussing Or Relating To Legality or Illegality Under the Antitrust Laws of the Venture Or Competition Or the Price of Any Product Or Service.

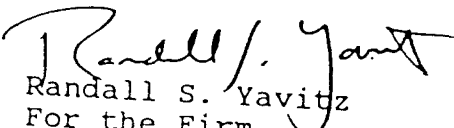
ACRS has obtained detailed data from the Medicare intermediary reflecting, on a procedure-by-procedure basis, the number of procedures performed by ACRS members and by all other physicians in Maricopa County and Arizona. The data reflect a market share, or average of the ACRS physicians of 15% for Maricopa County and 9% for Arizona. The new data received by Aetna on behalf of Medicare is attached as Exhibit 4. Compilations of the data and explanatory notes are attached as Exhibit 5.

The issue of antitrust, however, has been discussed in the organizational meetings with members and as a result, a decision was made to request an expedited review letter.

If you have any questions concerning this request, please feel free to contact me directly. Thank you for your consideration.

Sincerely,

SACKS TIERNEY P.A.


Randall S. Yavitz
For the Firm

Enclosures