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March 11, 1997

The Honorable Joel I. Klein
Acting Assistant Attorney General
Antitrust Division
United States Department of Justice
10th and Constitution Avenue, N.W.
Washington, D.C. 20530

Re: Request for Business Review

Dear Acting Assistant Attorney General Klein:

In accordance with 28 C.F.R. § 50.6, on behalf of the Vermont Physicians Clinic ("the Clinic"), I am requesting a business review letter from the Antitrust Division, United States Department of Justice to the effect that it has no present enforcement intention with respect to the proposed business conduct outlined below. I am making this request in accordance with the business review process outlined in the Division's expedited business review procedure announced on December 1, 1992.

The Clinic is a not for profit corporation that will comprise approximately 40 physicians from multiple specialties in the vicinity of Rutland, Vermont. The Clinic, as envisioned, will jointly negotiate on behalf of the physician members with managed care or other third party payors on a capitated or withhold basis. The Clinic will provide utilization review and quality improvement functions, as well as some administrative functions. The Clinic will be non-exclusive and physicians will be able to contract with managed care entities either independently or through other networks. The Clinic will also have a Community Advisory Board whose mission will be to monitor the needs of the community and to "flag" areas in need of improvement based in part upon patient perception. It is the intention of the Clinic that the Community Advisory Board will serve to foster and improve the relationship of the Clinic with all health care providers, as well as improve the efficient operation of the Clinic.

Geographic Information

Rutland, Vermont is a rural community served by one acute care hospital, the Rutland Regional Medical Center ("RRMC"). Although RRMC is not a part of the affiliation involving the Clinic, the Clinic intends to work cooperatively with RRMC. Tertiary care hospitals are approximately 44-63 miles from Rutland, including the Medical Center of Vermont in Burlington, Vermont (63 miles) and Dartmouth Hitchcock Medical Center in Lebanon, New Hampshire (44 miles). Additionally, the Porter Medical Center in Middlebury, Vermont is a small rural community hospital approximately 32 miles from Rutland. It is important to note that travel between Rutland and Burlington or Lebanon is

difficult. Only secondary roads connect Rutland with Burlington and Lebanon. As a result, particularly in winter when the weather is bad or at least unpredictable, travel from Rutland to Burlington or Lebanon can take more than one and one-half hours.

Inpatient discharge data for 1994 indicates that about 75% of patients originating in Rutland County sought care at RRMC. About 8% of residents sought care at Burlington, Vermont (Medical Center of Vermont), and about 5% of residents sought inpatient care at Lebanon, New Hampshire (Dartmouth Hitchcock Medical Center). Conversely, most (about 85%) of RRMC's inpatients originate in Rutland County, although RRMC does service a relatively large transient population of tourists and skiers. Due to the geographic isolation of Rutland, it is likely that a properly defined geographic market would be fairly narrow, encompassing Rutland County and parts of the surrounding counties of Windsor, Bennington, and Addison.

Existing Physician Networks

RRMC, the only acute care hospital serving Rutland, Vermont, sponsors a physician hospital organization ("PHO") to which virtually all of the physicians with active staff privileges at RRMC belong. There are approximately 100 physicians in Rutland with privileges at RRMC.

RRMC has recently purchased a number of physician practice groups, with an intention, we believe, to create a vertically integrated staff model. We believe that about half of the physicians in Rutland (about 50 physicians) are employees of RRMC as a result of the practice group acquisitions and the physician recruitment and hiring activities of RRMC.

Proposed Affiliation

Many of the remaining independent physicians propose to form the Clinic and to work cooperatively with RRMC and the major tertiary referral centers in Burlington and Lebanon. The framework under which the Clinic will operate is designed to allow members to retain some autonomy and the ability to make important decisions about their practices, while at the same time integrating into a single corporation run by group consensus and an elected board. The Clinic will be non-exclusive and will operate in practice in a non-exclusive manner. For example, virtually all of the physician members of the Clinic are currently members of the RRMC PHO, no right of first refusal in contracting will be sought, and the proposed bylaws of the Clinic will clearly permit physicians to contract independently of the Clinic with any managed care entity or other third party payor. Members of the Clinic are free to set their own fee schedules if they choose to opt out of managed care contracts entered into by the Clinic, and are not subject to any restrictive covenants, such as a non-compete clause, should

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they leave the Clinic. In general, the Clinic will act as a vehicle to facilitate contracting between the independent physicians and managed care plans. Physicians in the Clinic will share risk either on a capitated basis or on a withhold basis, and are required to pay a non-refundable membership fee of two-thousand dollars (\$2,000.00) upon joining. The Clinic will also provide centralized administrative functions such as billing, purchasing, malpractice insurance, marketing and public relations, personnel management and employee fringe benefit management.

Currently, 37 physicians have formally indicated their willingness to join the Clinic if it is formed. We expect that more physicians will join, possibly as many as 45 to 50 physicians in total.

The physicians in the Clinic will represent multiple specialties. Because the market is rural and the number of physicians in many specialties is quite small, the Clinic will exceed the 30% safety zone described in Statement 8 of the 1996 Statements of Antitrust Enforcement Policy in Health Care in several specialties. However, in some specialties, all of the physicians are in a single practice currently and, therefore, the competitive landscape will be unchanged. The specialties that fall into this category, i.e., competition will not change because all physicians joining the Clinic are currently in a single practice, are: neurology, neurosurgery, oncology, otolaryngology, plastic surgery, radiology, and urology. Several of these specialties have only 1 or 2 privileged physicians in Rutland and, therefore, it would be impossible to remain within the safety zone if a single physician joined the Clinic in that area.

In 5 specialties, 100% of the physicians in the market are employed by or otherwise affiliated with RRMC and will not belong to the Clinic. These include cardiology (3 physicians), emergency medicine (16 physicians), endocrinology (1 physician), orthopaedics (5 physicians), and pathology (5 physicians).

Of 5 psychiatrists, 3 are independent, 1 works for RRMC and 1 is in the Clinic, thereby falling within the 30% safety zone for both the Clinic and RRMC.

In 2 specialties, general surgery (5 physicians in 2 practice groups) and gastroenterology (2 physicians in 2 groups),¹ all of the physicians in the specialty with privileges at RRMC have expressed an interest in joining the Clinic. In dermatology, (2 physicians in 2 groups), 1 physician is in the Clinic and 1 is independent. In ophthalmology (3 physicians in 2 groups), 2 are in the Clinic and 1 is independent. However, several factors will help to ensure that these specialties continue to offer competitive alternatives to consumers of healthcare services in Rutland. As noted above, each practice group will have the ability to establish its own fees even after joining the Clinic. Additionally, there are approximately 12 optometrists that offer a ready alternative for certain routine services provided by ophthalmologists. Finally, it is important to note that in more rural markets, such as Rutland, procedures that would otherwise be undertaken by a specialist, e.g., a dermatologist, will more often be accomplished by those who practice family medicine or internal medicine. Thus, unlike more urban markets, product substitution is much more likely to occur. As a consequence, competition for such physician services is greatly enhanced.

Of 15 physicians who are board certified in internal medicine, 9 have expressed interest in joining the Clinic, 3 are employed by RRMC, and 3 are independent. Although, on its face, it appears that the number of internists joining the Clinic exceeds the 30% safety zone, in reality it does not because of the areas in which these physicians subspecialize. Only 4 of the 9 who would join the Clinic routinely practice the broad spectrum of general adult internal medicine. One of the 9 has a substantial practice in gastroenterology. One has a substantial pediatric practice. One practices in the areas of critical care and cardiology. One practices in the areas of pulmonology, critical care, and sleep disorders.² One practices in the area of infectious disease. In addition, family practice physicians (discussed in detail below) offer a ready substitute for the services provided by physicians in the field of general internal medicine.

¹ One of these physicians practices exclusively in the area of gastroenterology in a solo practice. The other practices largely, but not exclusively, in gastroenterology, as a member of a 4 person internal medicine group. Both are board certified in internal medicine.

² RRMC employs 3 physicians who are board certified in internal medicine. All practice in the area of critical care and 2 practice pulmonology.

In pediatrics, there are 5 physicians in 1 practice group, all of whom are certified by the American Board of Pediatrics. Of these, 2 are in the Clinic but will continue to practice with their colleagues in the pediatric group. The remaining 3 have not joined the Clinic. As discussed above, 1 physician in the Clinic is board certified in both internal medicine and pediatrics and has a significant practice in both areas. One pediatrician who is not in the Clinic works part-time at Capital Area Community Health Plan ("CHP"). Although the number of pediatricians joining the Clinic exceeds the 30% safety zone, physicians who practice in the area of family medicine (discussed in detail below) see many pediatric patients and offer a ready competitive substitute. As mentioned earlier, product substitution is more likely to occur for certain services in a rural market than in a more urban setting, and this has proven to be the case in the area of pediatrics, as well.

Finally, in the area of family practice, there are 21 physicians. Of these, 13 are employed by RPMC, 4 work for CHP, 2 are independent, and 2 are in the Clinic. Family practice physicians typically compete with internal medicine physicians, pediatricians, and dermatologists.

Factors Motivating the Affiliation

A. Response to Vertical Integration of RPMC

The primary impetus driving the formation of the Clinic is the stated intention of RPMC to employ ninety (90) per cent of the physicians in Rutland County within the next three years in a vertically integrated staff model system. The physicians who are interested in joining the Clinic wish to maintain their ability to compete independently, a goal that will be difficult to achieve if they remain in their separate practices, given RPMC's acquisition of a significant number of physician practice groups. About 50% of all Rutland area physicians at present are employees of RPMC. The independent physicians wish to enhance their potential to contract with managed care entities and other third party payors by preserving their ability to form a panel of physicians with sufficient breadth to satisfy their needs.^{3/} The independent physicians feel that in order to survive they need to be able to offer an

³ In this respect, the Clinic is similar to a venture that the Division declined to challenge in a Business Review Letter issued on October 28, 1994, to Physician Care, Inc. ("PCI"). Like PCI, the Clinic will be the only competitive alternative to an existing physician organization that is affiliated with a hospital. In PCI, the existing network had about 62% of the local area physicians. It is probable that, in the absence of the Clinic, the percentage of physicians employed by RPMC will substantially exceed the 62% described in the PCI business review request.

alternative to the monopoly that RRMC will enjoy due to its dominance and purchase of physician practices.

B. Pro-Competitive Benefits

As alluded to above, the Clinic believes that, although it will exceed the safety zones of Statement 8 of the 1996 Statements of Antitrust Enforcement Policy in Health Care, the formation of the Clinic will have significant pro-competitive benefits.

Rather than a single entity (RRMC) with dominance in many specialties, the Clinic will provide balance and a competitive alternative to the monopoly that may result from RRMC's actions. RRMC must negotiate with the Clinic in order to provide a broad panel of specialists to managed care entities, and consequently will be constrained from exercising its monopoly power in those specialties that it dominates, such as orthopaedics and cardiology. As a result, there will be more choice and more competition for patients and third party payors.

In addition, managed care entities have expressed approval for the actions of the independent physicians to organize themselves through the Clinic. Managed care companies believe that the presence of another entity, such as the Clinic, would give payors more bargaining power to negotiate lower rates from RRMC.

On balance, the pro-competitive benefits of the Clinic are likely to be significant and outweigh any anti-competitive effects.

C. Efficiencies

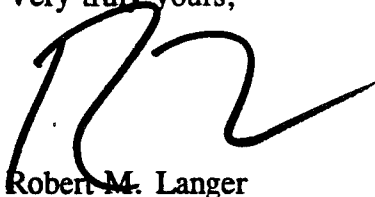
Finally, the independent physicians believe that centralizing some administrative functions in the Clinic will result in substantial efficiencies, especially for the many small one and two physician practices that currently exist. These efficiencies have not been quantified at present, but we believe very real cost savings will occur in the areas of billing, purchasing, malpractice insurance, information systems, marketing and public relations, personnel management, and employee benefit management. The physicians intend to pass on any cost savings to patients in the form of competitive charges.

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Conclusion

I hope that you will agree that the formation of the Clinic as planned would result in significant pro-competitive benefits and substantial efficiencies in the Rutland, Vermont, area. My client and I are willing to answer any questions or provide you with any further information that you may need concerning the events and situation in Rutland. If the numbers we have provided to you change during the course of your review, I will, of course, submit updated information to the Division as it becomes available to me. Because I believe that the Division will ultimately agree that the Clinic will not harm competition, and may likely be the only possibility to increase competition in Rutland, we look forward to a favorable reply from the Division.

Very truly yours,



Robert M. Langer

Enclosure

✦ c: David C. Jordan, Esq.
Assistant Chief
Health Care Task Force
Antitrust Division
United States Department of Justice

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