UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA, 1401 H Street, N.W. Suite 4000 Washington, D.C. 20530 Plaintiff, v. MOUNTAIN HEALTH CARE, P.A. 2 Hendersonville Road Suite C Asheville, NC 28803 Defendant.	Civil No.: 1:02CV288-T Filed December 13, 2002

COMPLAINT

The United States of America, by its attorneys and acting under the direction of the Attorney General of the United States, brings this civil antitrust action to obtain equitable relief against Defendant Mountain Health Care, P.A. ("Mountain Health Care"). The United States alleges as follows:

I.

INTRODUCTION

1. In coordination with the more than 1,200 North Carolina physicians who are its participating physicians, Mountain Health Care organized and directed an effort to develop a uniform fee schedule to be used to negotiate and contract for fees for physician reimbursement from a wide range of managed care companies, health insurance companies, third-party

administrators and employers (hereinafter collectively referred to as "managed care purchasers") who provide health care benefits directly to their employees and enrollees. Through Mountain Health Care's use of that uniform fee schedule, its participating physicians communicated, negotiated, and contracted with many managed care purchasers. These collective negotiations, communications and contracts unreasonably restrained competition among the independent physicians and their various medical practice groups that participate in Mountain Health Care; and, as a result, managed care purchasers incurred artificially higher physician reimbursement fees. The United States, through this suit, asks this court to direct defendant Mountain Health Care to disband promptly, before further injury to consumers in North Carolina and elsewhere occurs.

II.

DEFENDANT

2. Mountain Health Care is a professional corporation incorporated under the laws of North Carolina, and is entirely owned by its participating physicians, although not all participating physicians are owners. There are more than 1,200 participating physicians and they practice in the Western North Carolina area, consisting, in whole or in part, of Buncombe, Burke, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, and Yancey counties. Mountain Health Care's principal, and only, office is located at 2 Hendersonville Road, Asheville, North Carolina 28803. Mountain Health Care and its participating physicians transact business and offer health care services to customers located in the Western District of North Carolina.

III.

JURISDICTION AND VENUE

3. The United States brings this action to prevent and restrain Defendant's continuing violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. § 4 and 28 U.S.C. §§ 1331, 1337 and 1345.

4. Mountain Health Care transacts business and has committed the unlawful acts at issue in North Carolina; and, its participating physicians are located in North Carolina. Consequently, this Court has jurisdiction over Defendant, and venue is proper in this District pursuant to 28 U.S.C. § 1391(c) and 15 U.S.C. § 22.

V.

EFFECTS ON INTERSTATE COMMERCE

5. Mountain Health Care contracts to provide health care services with businesses located outside North Carolina. These businesses remit substantial payments to Mountain Health Care's physicians in North Carolina. Mountain Health Care is engaged in, and its activities substantially affect, interstate commerce.

VI.

BACKGROUND INFORMATION

6. Physicians frequently contract with managed care purchasers. These contracts establish the terms and conditions, including price, under which physicians will render care to the enrollees of managed care purchasers. In negotiations with managed care purchasers, physicians frequently agree to charge rates lower than their customary rates, in order to gain access to the

managed care purchaser's enrollees. As a result of this lower rate, such contracts often lower the managed care purchasers' cost, and therefore lower the cost of health care for their enrollees.

7. Absent an agreement among otherwise competing physicians or medical practices, each independent physician, medical partnership or professional corporation independently decides whether or not to enter into a contract with a particular managed care purchaser, and independently negotiates the terms, including price, of such an agreement.

VII.

DEFENDANT'S UNLAWFUL ACTIVITIES

8. Mountain Health Care was incorporated on August 22, 1994. A key objective of the joint venture was to develop a common fee schedule and represent its participating physicians in negotiations with managed care purchasers. Since its inception, Mountain Health Care has been comprised of the vast majority of private practice physicians in the greater Asheville area, representing virtually every medical specialty, including the bulk of physicians with admitting privileges at Mission St. Joseph's Hospital, the only hospital available to the general public in Asheville, North Carolina and surrounding Buncombe County. Mountain Health Care provides managed care purchasers and their enrollees with immediate access to substantially all of the physicians in Asheville and the surrounding counties.

9. Mountain Health Care's participating physicians agreed to have Mountain Health Care negotiate with managed care purchasers on their behalf. To facilitate such negotiations, Mountain Health Care and its participating physicians developed a uniform fee schedule for use in its dealing with managed care purchasers. The fee schedule was developed, in part, by blending

the rates of multiple physician practices. Mountain Health Care adopted a uniform price schedule that applied to almost every physician in Asheville and the surrounding counties.

10. Mountain Health Care used the uniform fee schedule in negotiations on behalf of its participating physicians with managed care purchasers, and entered into contracts with them under the fee schedule. By using this uniform fee schedule Mountain Health Care set the reimbursement rates its participating physicians would receive from most self-insured employers, third party administrators, and smaller health insurance companies. For managed care purchasers who purchase a physician network through a Mountain Health Care fee schedule, each competing physician is paid the same amount for the same service. Mountain Health Care continued to use such a uniform fee schedule into 2002.

11. Mountain Health Care has not clinically or financially integrated its physicians to create efficiencies sufficient to justify the use of a uniform fee schedule in joint negotiations and contracts with managed care purchasers.

VIII.

VIOLATION ALLEGED

12. Beginning at least as early as August 1994, and continuing to date, Defendant and its participating physicians have participated in an agreement which has unreasonably restrained interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. This offense is likely to continue and recur unless the relief requested is granted.

13. The agreement consisted of an understanding and concert of action among Defendant and its participating physicians that Mountain Health Care would develop and adhere to a uniform fee schedule to use in negotiations with managed care purchasers, and that Mountain

Health Care would represent its participating physicians exclusively in contract negotiations with certain managed care purchasers.

14. The use of this uniform fee schedule has resulted in increased physician reimbursement fees to managed care purchasers throughout Western North Carolina. Physicians and practice groups that normally would have competed with each other set the same price for their services. Thus, Mountain Health Care is operating as a price-setting organization.

15. In furtherance of this agreement, Defendant and its participating physicians and employees engaged in the following conduct:

(a) Incorporated Mountain Health Care on August 22, 1994;

(b) Developed and implemented a uniform fee schedule and used that fee schedule in negotiations on behalf of its participating physicians with managed care purchasers; and

(c) Entered into contracts with managed care purchasers pursuant to that uniform fee schedule.

IX.

EFFECTS

16. Mountain Health Care's actions have restrained price and other forms of competition between physicians in Western North Carolina and thereby harmed consumers, such as managed care purchasers, employers and their enrollees, by increasing prices for physician services.

17. This agreement has had the following effects, among others:

(a) Price competition among the participating physicians has been unreasonably restrained;

(b) Managed care purchasers, and their enrollees and employees in Western North Carolina have been denied the benefits of free and open competition in the sale of physician services to managed care purchasers; and

(c) Managed care purchasers, and their enrollees and employees in Western North Carolina have paid higher prices for physician services sold through managed care purchasers than they would have paid in the absence of this restraint of trade.

X.

REQUEST FOR RELIEF

18. Plaintiff requests that the Court:

(a) Declare the actions of Mountain Health Care to be a violation of Section One of the Sherman Act, 15 U.S.C. § 1; and

(b) Order the prompt dissolution of Mountain Health Care.

DATED: DECEMBER 13, 2002

FOR PLAINTIFF
UNITED STATES OF AMERICA:

CONSTANCE K. ROBINSON
Director of Operations

MARK J. BOTTI
Chief, Litigation I

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA, Plaintiff, v. MOUNTAIN HEALTH CARE, P.A., Defendant.	Civil No.: 1:02CV288-T Filed December 13, 2002

STIPULATION

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the Western District of North Carolina.

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on the defendants and by filing that notice with the Court.

3. Defendant shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, and shall, from the date of the filing of this

Stipulation, comply with all the terms and provisions thereof as though the same were in full force and effect as an order of the Court.

4. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

FOR PLAINTIFF UNITED STATES OF AMERICA:

Dated: 10/2, 2002

Weun Wang, Esq.
Litigation II Section
Antitrust Division
U.S. Department of Justice

FOR DEFENDANT MOUNTAIN HEALTH CARE, P.A.:

Dated: Sept 26, 2002

John J. Miles, Esq.
Ober, Kaler, Grimes & Shriver
Counsel for Defendant Mountain Health Care, P.A.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA, 1401 H Street, N.W. Suite 4000 Washington, D.C. 20530 Plaintiff, v. MOUNTAIN HEALTH CARE, P.A. 2 Hendersonville Road Suite C Asheville, NC 28803 Defendant.	Civil No.: 1:02CV288-T Filed December 13, 2002

FINAL JUDGMENT

WHEREAS, defendant has represented to the United States that its dissolution as ordered herein can and will be made promptly and that defendant later will raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

NOW, THEREFORE, before taking any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendant under Section 1 of the Sherman Act (15 U.S.C. § 1).

II. DEFINITIONS

As used in this Final Judgment:

A. "Mountain Health Care" means defendant Mountain Health Care P.A., a North Carolina corporation, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, shareholders, participating members, and its directors, officers, managers, agents, and employees.

B. "Participate" in an entity means to be a partner, shareholder, owner, member, or employee of such entity, or to provide services, agree to provide services, or offer to provide services, to a payer through such entity.

C. "Payer" means any person that pays, or arranges for payment, for all or any part of any provider services for itself or for any other person.

D. "Person" means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.

E. "Preexisting contract" means a contract that was in effect prior to the date of the filing of the Complaint in this matter.

F. "Provider" means a doctor of allopathic medicine, a doctor of osteopathic medicine, or any other person licensed by the state to provide ancillary health care services.

III. APPLICABILITY

This Final Judgment applies to defendant Mountain Health Care and all other persons in active concert or participation with Mountain Health Care who receive actual notice of this Final Judgment by personal service or otherwise.

IV. DISSOLUTION OF MOUNTAIN HEALTH CARE

A. Defendant will cause the complete and permanent dissolution of Mountain Health Care as an on-going business entity by no later than 120 calendar days after the filing of the Complaint in this matter, or 10 days after notice of the entry of this Final Judgment by this Court, whichever is later.

B. Beginning immediately after filing of the Complaint in this matter:

1. defendant will not enter into any new contracts with any payers for the provision of provider services or renew any terms of any preexisting contract with any payer for the provision of provider services;

2. defendant will terminate all preexisting contracts with payers by no later than 120 calendar days after the filing of the Complaint in this matter, or 10 days after notice of the entry of this Final Judgment by this Court, whichever is later.

C. Defendant will cease doing business of any kind or manner at the expiration of 120 calendar days after the filing of the Complaint in this matter, or 10 days after notice of the entry of this Final Judgment by this Court, whichever is later.

D. Within 14 calendar days after the date of filing of the Complaint in this matter, defendant will distribute by first-class mail:

1. to the chief executive officer of each payer then under contract with Mountain Health Care, a copy of the Complaint, this Final Judgment, a notice of the dissolution required under § IV, and a notice of contract termination pursuant § IV.B.2;

2. to each provider then participating in Mountain Health Care, a copy of the

Complaint, this Final Judgment, and a notice of the dissolution required under § IV.

V. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether this Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time, duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant made to its principal offices, shall be permitted:

1. access during office hours of defendant to inspect and copy, or at plaintiff's option, to require defendant to provide copies of, all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the custody or possession or under the control of defendant relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, defendant's officers, employees, and agents, who may have their individual counsel present, regarding any such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendant.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, made to defendant's principal offices,

defendant shall submit written reports, under oath if requested, relating to any matter contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendant to the United States, defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 calendar days notice shall be given defendant by the United States prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendant is not a party.

VI. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final 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 Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

VII. PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

VIII. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

Dated: _____, 2003

Court approval subject to procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. §16

_____

United States District Judge

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

FILED
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W. DIST. OF N.C.

UNITED STATES OF AMERICA, Plaintiff, v.	)	Civil No.: 1:02CV288-T
MOUNTAIN HEALTH CARE, P.A. Defendant.	)	Filed 12/19/02

COMPETITIVE IMPACT STATEMENT

The United States, pursuant to Section 2 of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

The plaintiff filed a civil antitrust Complaint on December 13, 2002, in the United States District Court for the Western District of North Carolina, alleging that Mountain Health Care and its participating physicians have participated in an agreement which has unreasonably restrained interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. §1. As alleged in the Complaint, this agreement has artificially raised the reimbursements paid to physicians in Western North Carolina by managed care companies, health insurance companies, third party administrators and employers (collectively "managed care purchasers") who provide health care benefits directly to their employees and enrollees. The Complaint requests that Mountain Health Care be ordered to promptly dissolve.

The proposed Final Judgment requires Mountain Health Care to dissolve within one hundred twenty (120) calendar days after the filing of the Final Judgment, or within ten (10) days after notice of entry of the Final Judgment by the Court, whichever is later, unless the United States grants an extension of time.

The plaintiff and the defendant have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment, and to punish violations thereof.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION OF THE ANTITRUST LAWS

A. Background

Mountain Health Care, a physician network joint venture, is a professional corporation that incorporated in 1994 under the laws of North Carolina, and which is located in Asheville, North Carolina. Mountain Health Care is comprised of more than 1,200 participating physicians practicing in Western North Carolina, consisting of Buncombe, Burke, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, and Yancey counties. It is entirely owned by its participating physicians, although not all participating physicians are owners; the shareholders and the majority of its board are physicians. Mountain Health Care sells its physician network to managed care purchasers, and its member physicians and medical practices offer health care services to consumers located in North Carolina.

Mountain Health Care's members constitute the vast majority of the physicians in private

practice in Asheville, North Carolina, and surrounding Buncombe County, representing virtually every medical specialty. In certain practice specialities, 100 percent of the Asheville area physicians are Mountain Health Care members. The group includes the majority of physicians with admitting privileges at Mission St. Joseph's Hospital, the only hospital available to the general public in Asheville, North Carolina, and surrounding Buncombe County.

Physicians frequently contract with managed care purchasers who provide health care benefits directly to their employees and enrollees. These contracts establish the terms and conditions, including price, under which physicians will provide care to the employees and enrollees of the health care plans offered by managed care purchasers. In order to gain access to managed care purchasers' enrollees, physicians often negotiate rates below their customary fees. As a result of these lower rates, contracts with managed care purchasers may lower the costs of health care for their enrollees. Independent physicians and medical practices compete against each other to offer health care services to managed care purchasers. Each physician or medical group decides whether or not to enter into a contract with a particular managed care purchaser, and independently negotiates the terms of such an agreement. Managed care purchasers are representatives of the ultimate consumers, and higher rates to managed care purchasers lead to higher health care costs for the ultimate consumers.

B. The Violation

The Mountain Health Care joint venture brought together a large group of physicians with the objective of increasing their bargaining power with managed care purchasers; indeed, Mountain Health Care was created by its participating physicians to maximize physician reimbursement in Western North Carolina. The participating physicians authorized Mountain

Health Care to represent them in negotiations with managed care purchasers, even though many of the independent physicians and medical practices that make up Mountain Health Care would have competed against each other. To facilitate such negotiations, Mountain Health Care and its participating physicians developed a uniform fee schedule for use in negotiations with managed care purchasers. The fee schedule was developed, in part, by comparing and blending the rates of multiple physicians. Mountain Health Care then adopted the uniform fee schedule that applied to all its members — nearly every physician in Asheville and the surrounding area.

For several years, using the uniform fee schedule, Mountain Health Care has negotiated for its participating physicians with managed care purchasers. Thus, it has acted as a vehicle for collective decisions by its participating physicians on price and other significant terms of dealing. Mountain Health Care has incorporated the fee schedule into contracts with health plans, thereby setting reimbursement rates its various participating physicians would receive from managed care purchasers. Under such contracts that provide access to the Mountain Health Care network of physicians, each competing physician is paid the same amount for the same service.

Mountain Health Care did not engage in any activity that might justify collective agreements on the prices its members would charge for their services. Its participating physicians have not clinically or financially integrated their practices to create significant efficiencies to the benefit of managed care purchasers and their employees and enrollees.

C. **The Competitive Effects of the Violation**

The agreement on a uniform fee schedule has had anticompetitive results. Through use of the uniform fee schedule, Mountain Health Care has operated as a price-setting organization. Without Mountain Health Care, the participating physicians normally would have competed

against each other for managed care purchasers. Instead, the participating physicians authorized Mountain Health Care to negotiate and set common prices and other competitively significant terms with managed care purchasers. Through Mountain Health Care, its participating physicians collectively agreed on prices for services rendered under Mountain Health Care contracts, an agreement in violation of Section 1 of the Sherman Act.

Mountain Health Care's imposition of a uniform fee schedule increased physician reimbursement fees to managed care purchasers throughout Western North Carolina. The physician reimbursement rates that have resulted from Mountain Health Care's negotiations with managed care purchasers are higher than those which would have resulted from individual negotiations with each competing independent physician or medical practice that participates in Mountain Health Care. With the large majority of physicians in Asheville and the surrounding area as members of Mountain Health Care and adhering to its uniform fee schedule, few, if any, competitive alternatives remained for managed care purchasers. The agreement on a uniform fee schedule, implemented through Mountain Health Care, eliminated meaningful competition for health care services in Asheville and the surrounding area.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment is designed to end the illegal concerted action alleged in the Complaint by requiring the defendant to dissolve within 120 days. This time period will allow the defendant's customers adequate time to seek alternative means of procuring physician services. This dissolution will reestablish competition between many of the independent participating physicians and medical practices of Mountain Health Care. This competition will benefit the purchasers of physician services by enabling them to negotiate with independent

physicians and practice groups and enabling them to negotiate price independently, instead of being forced to pay the fees outlined in Mountain Health Care's uniform fee schedule.

Unless the United States grants an extension of time, Mountain Health Care's dissolution must be completed within one hundred twenty (120) calendar days after the filing of the Final Judgment, or ten (10) days after notice of entry of the Final Judgment by the Court, whichever is later. The Final Judgment imposes certain obligations on Mountain Health Care with respect to facilitating its dissolution, including providing notice to its members and customers.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal district court to recover three times the damages the person has suffered, as well as the costs of bringing a lawsuit and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The parties have stipulated that the proposed Final Judgment may be entered by this Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon this Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should

do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the *Federal Register*. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with this Court and published in the *Federal Register*. Written comments should be submitted to:

Mark J. Botti
Chief, Litigation I Section
Antitrust Division
United States Department of Justice
1401 H Street, N.W., Suite 4000
Washington, D.C. 20530

The proposed Final Judgment provides that this Court retains jurisdiction over this action, and the parties may apply to this Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendant Mountain Health Care. The United States is satisfied, however, that the dissolution of Mountain Health Care proposed in the Final Judgment will more quickly achieve the primary objective of a trial on the merits — reestablishing competition in the relevant market.

VII. STANDARD OF REVIEW UNDER THE APPA FOR PROPOSED FINAL JUDGMENT

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final 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) (emphasis added). As the Court of Appeals for the District of Columbia has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States v. Microsoft Corp.*, 56 F.3d 1448, 1458-62 (D.C. Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."[1] Rather,

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[1] 119 CONG. REC. 24,598 (1973). *See United States v. Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA.

> absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.[2]

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462-63 (9th Cir. 1988), *quoting United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); *see also Microsoft*, 56 F.3d at 1458. Precedent requires that

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[3]

The proposed Final Judgment, therefore, should not be reviewed under a standard of

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Although the APPA authorizes the use of additional procedures, those procedures are discretionary (15 U.S.C. § 16(f)). A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. No. 93-1463, 93rd Cong. 2d Sess. 8-9 (1974), *reprinted in* 1974 U.S.C.C.A.N. 6535, 6538.

[2] *United States v. Mid-America Dairymen, Inc.*, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977); *see also United States v. Loew's Inc.*, 783 F. Supp. 211, 214 (S.D.N.Y. 1992); *United States v. Columbia Artists Mgmt., Inc.*, 662 F. Supp. 865, 870 (S.D.N.Y. 1987).

[3] *United States v. Bechtel Corp.*, 648 F.2d at 666 (citations omitted) (emphasis added); *see United States v. BNS, Inc.*, 858 F.2d at 463; *United States v. National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States v. Gillette Co.*, 406 F. Supp. at 716. *See also United States v. American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), *cert. denied*, 465 U.S. 1101 (1984).

whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. A "proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'"[4]

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States alleges in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459. Since the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that the court "is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States might have but did not pursue. *Id.*

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[4] *United States v. American Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (*quoting Gillette*, 406 F. Supp. at 716), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983); *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985); *United States v. Carrols Dev. Corp.*, 454 F. Supp. 1215, 1222 (N.D.N.Y. 1978).

VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: December 18, 2002.
Washington, D.C.

Respectfully submitted,

Mark J. Botti
Weeun Wang
David C. Kelly
Steven R. Brodsky
Barry L. Creech
Karl D. Knutsen

U.S. Department of Justice
Antitrust Division
Litigation I Section
1401 H Street, N.W., Suite 4000
Washington, D.C. 20530
202-307-0001

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Competitive Impact Statement via First Class United States Mail, this 18th day of December, 2002, on:

FOR DEFENDANT MOUNTAIN HEALTH CARE

Jeri Kumar, Esq.
D.B. & T. Building
Suite 510
Asheville, NC 28801

I hereby certify that I personally served a copy of the foregoing Competitive Impact Statement, this 18th day of December, 2002, on:

FOR DEFENDANT MOUNTAIN HEALTH CARE

Jeff Miles, Esq.
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David C. Kelly

Department of Justice

FOR IMMEDIATE RELEASE
FRIDAY, DECEMBER 13, 2002
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AT
(202) 514-2007
TDD (202) 514-1888

JUSTICE DEPARTMENT REQUIRES MOUNTAIN HEALTH CARE TO DISBAND

Settlement Ends Agreement Between Physician Network and Member Physicians to Set Fees

WASHINGTON, D.C. -- The Department of Justice announced today that it will require Mountain Health Care, an independent physicians organization headquartered in Asheville, North Carolina, to cease its operations and dissolve. The Department said that under its settlement, Mountain Health Care will cease negotiating and contracting with health care plans on behalf of its participating physicians, a practice which resulted in consumers paying increased prices to Mountain Health Care's physician members for health care services.

The Department's Antitrust Division filed a lawsuit today in U.S. District Court in Western North Carolina. At the same time, the Department filed a proposed consent decree that, if approved by the court, would resolve the lawsuit and the Department's competitive concerns.

"The Antitrust Division is committed to ensuring that consumers buying health care services receive the benefits of competition," said Constance K. Robinson, Director of Operations in the Department's Antitrust Division. "This settlement ensures that the agreement used to raise the costs of health care to consumers in North Carolina is eliminated."

According to the Complaint, Mountain Health Care restrained price and other forms of competition among physicians in Western North Carolina by adopting a uniform fee schedule governing the prices of its participating physicians. Physicians and physician groups that

normally would have competed with each other adopted a uniform price schedule and authorized Mountain Health Care to negotiate with health plans on their behalf. Mountain Health Care agreed to contracts with managed care purchasers that incorporated the collectively set fees. These actions resulted in higher rates charged to health plans leading to higher health costs for ultimate consumers.

The Complaint further states that Mountain Health Care has not clinically or financially integrated its physicians to create efficiencies sufficient to outweigh the alleged anticompetitive actions.

The proposed Final Judgment will be published by the Federal Register, along with the Department's Competitive Impact Statement, as required by the Antitrust Procedures and Penalties Act. Any person may submit written comments concerning the proposed consent decree within 60 days of its publication to Mark J. Botti, Chief; Litigation I; Antitrust Division; United States Department of Justice; 1401 H Street., N.W.; Room 4000; Washington, D.C. 20530 (Tel.: (202) 307-0001). At the conclusion of the 60-day comment period, the Court may enter the proposed consent decree upon a finding that it serves the public interest.

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