

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :

Plaintiff, :

v. :

GEISINGER MEDICAL CENTER
and SHAMOKIN AREA COMMUNITY
HOSPITAL :

Defendants. :

No.:

344 MD 2011

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION NO.
	:	
GEISINGER MEDICAL CENTER AND SHAMOKIN AREA COMMUNITY HOSPITAL	:	
	:	
Defendants.	:	

COMPLAINT

The Commonwealth of Pennsylvania, through its Office of Attorney General, brings this action under the common law of the Commonwealth of Pennsylvania to block the proposed merger of Shamokin Area Community Hospital (“SACH”) into Geisinger Medical Center (“GMC”). Unless prevented, this merger may substantially lessen or eliminate competition for the provision of primary and secondary inpatient acute-care hospital services sold to Medicare Advantage Plans, as well as primary and non-tertiary specialty physician services in Northumberland County, Pennsylvania.

I. Jurisdiction

1. This Court has jurisdiction over this action pursuant to 42 PA. CONS. STAT. ANN. § 761.

II. Parties

2. The Plaintiff is the Commonwealth of Pennsylvania, represented by its elected Attorney General, Linda L. Kelly. Attorney General Kelly is the chief law enforcement officer of the Commonwealth of Pennsylvania and is authorized by the Commonwealth Attorneys Act to bring actions on behalf of the Commonwealth and its citizens for violations of the antitrust laws pursuant to 71 P.S. § 732-204(c). The Commonwealth of Pennsylvania brings this action as parens patriae to protect its general economy and as a direct purchaser of hospital services from defendants through its Medicaid and Pennsylvania Employee Benefits Trust Fund programs.

3. Geisinger Medical Center (“GMC”) means the non-profit hospital, of which the Geisinger Health System Foundation, a Pennsylvania non-profit corporation serves as sole corporate member, organized under the laws of the Commonwealth of Pennsylvania and having its principal address at 100 North Academy Avenue, Danville, PA.

4. Shamokin Area Community Hospital (“SACH”) means the non-profit hospital organized under the laws of the Commonwealth of Pennsylvania having its principal address at 4200 Hospital Road, Coal Township, PA.

III. Definitions

5. “Acute-Care Hospital” means a health care facility, licensed as a hospital, having a duly organized governing body with overall administrative and professional responsibility and an organized medical staff that provides 24-hour inpatient care as well as outpatient services and having as a primary function the provision of inpatient services for medical diagnosis, treatment and care of physically injured or sick persons with short-term or episodic health problems or infirmities.

6. "Acquire" means to purchase the whole or the majority of the assets, stock, equity, capital, or other interest of a corporation or other business entity, or to receive the right or ability to designate or otherwise control the majority of directors or trustees of a corporation or other business entity.

7. Geisinger Clinic ("GC") means the multi-specialty group practice which is a non-profit corporation organized under the laws of the Commonwealth of Pennsylvania with its principal address at 100 North Academy Avenue, Danville, PA.

8. "Health-Care Provider" means any physician, hospital, clinic, laboratory or physician network.

9. "Health Plan" means all types of organized health-service purchasing programs, including, but not limited to, health insurance and managed-care plans, offered by government, for-profit or non-profit, third-party payors, health care providers or any other entity.

10. "Inpatient Acute-Care" includes room and board, medical or surgical diagnostic and treatment services, around-the-clock monitoring and observation, nursing care, laboratory, x-ray and support services for physically injured or sick persons with short-term or episodic health problems or infirmities.

11. "Medicare Advantage Plans" means a health plan option approved by Medicare and run by private Health Plans. These plans are part of the Medicare Program in which Medicare pays an amount for members' care each month to private Health Plans and private Health Plans must follow rules set by Medicare. The plans cover members' Part A (Hospital Insurance) and Part B (Medical Insurance) benefits and must cover all of the medically necessary services that the Original Medicare Plan provides. The plans may offer extra benefits such as vision, hearing, dental and/or health and wellness programs. The plans generally have provider networks, which

mean members probably have to see doctors who belong to the plans or go to certain hospitals to get covered services. If members use doctors or hospitals that are not in the Health Plans' networks, they may have to pay the entire cost of the covered services or pay a higher cost for these out-of-network provider covered services.

12. "SACH Medicare Advantage Contract" means a Medicare Advantage Plan contract that is currently in effect between SACH and a Health Plan, or the portion of a Health Plan's contract which relates to the Health Plan's Medicare Advantage members, for the furnishing of inpatient and/or outpatient health care services at SACH to Health Plan Medicare Advantage members.

IV. Trade and Commerce

13. According to data published by the Pennsylvania Health Care Cost Containment Council, total net patient revenues of GMC in 2010 were \$751,905,000 and total operating expenses were \$718,409,000. Total net patient revenues of SACH in 2010 were \$34,515,000 and total operating expenses were \$35,550,000. SACH has 55 beds and a three-year average daily census of 34.8 beds.

V. Relevant Product Markets

14. GMC and SACH sell primary and secondary inpatient Acute-Care Hospital services to a variety of Medicare Advantage Plans. Medicare Advantage Plans reduce health-care costs by encouraging hospitals to compete vigorously on price and quality. These plans contract with a select number of hospitals and employ financial incentives to encourage plan enrollees to use the contracted facilities.

15. Through competition for the provision of primary and secondary inpatient Acute-Care Hospital services to Medicare Advantage Plans, these price-sensitive health-care

purchasers secure hospital services at competitive rates, which substantially contain overall costs of hospital care. This, in turn, permits Medicare Advantage Plans to offer Health Plans to consumers with more benefits for the premiums set by Medicare at lower prices. Medicare Advantage Plans constitute a significant percentage of GMC's and SACH's revenues from patient care.

16. While GMC is not located in Northumberland County, it is the largest provider of primary and secondary inpatient Acute-Care Hospitals services to residents of Northumberland County, generally, and to Medicare Advantage Plans, in particular. SACH is the second largest provider of such services. GMC and SACH are each other's sole significant competitor for the provision of primary and secondary inpatient Acute-Care Hospital services for Medicare Advantage members in Northumberland County. There are no other hospitals within the relevant geographic market except Sunbury Community Hospital ("Sunbury"), and Sunbury had less than 10% of total cases in Northumberland County during the same time period.

17. Hospitals in surrounding counties, in particular Evangelical Community Hospital in Lewisburg, Union County, Pennsylvania offer only limited competition in Northumberland County.

18. Medicare Advantage Plans serving or seeking to serve Northumberland County cannot use hospitals outside Northumberland County to constrain prices at GMC post-merger.

19. The Centers for Medicare and Medicaid Services ("CMS") require that a potential plan have sufficient access to primary and secondary Inpatient Acute-Care Services, tertiary in-patient acute care services and primary specialist, and tertiary specialist physician services, among other services, to potential Medicare Advantage Plan members within a county.

20. GMC and SACH compete for the provision of primary and secondary inpatient Acute Care Hospital services in Northumberland County. They do not compete in the provision of tertiary or higher level inpatient Acute-Care Hospital services.

21. In the event of a significant price increase, Medicare Advantage Plans, cannot turn to hospitals outside this geographic market as substitutes and continue to market a product in Northumberland County.

22. Medicare Advantage Plans serve consumers receiving Medicare, most of whom are ages 65 and older.

23. As Medicare Advantage Plans serve older consumers, those consumers have less physical ability to travel and often have less income to pay for travel costs than other consumers. Medicare Advantage Plans cannot serve Northumberland County without access to SACH or GMC.

24. Pre-merger, a Medicare Advantage Plan could have either GMC or SACH in its network and offer a product in Northumberland County.

25. Medicare Advantage Plans cannot use hospitals or primary care and non-tertiary specialist physicians outside this geographic market to constrain prices at GMC post-merger.

26. The provision of primary and secondary inpatient Acute-Care Hospital services sold to Medicare Advantage Plans constitutes a line of commerce, or a relevant product market.

27. GC also operates physician practices in Northumberland County. These physician practices compete with independent physicians in solo or small group practices in Northumberland County who have privileges at SACH.

28. GMC's Danville hospital is a "closed staff" model hospital meaning that only physicians employed by GC have staff privileges at GMC.

29. If GMC were to apply the closed staff model to SACH after its acquisition, it could eliminate competition from independent physicians who currently have privileges at SACH.

30. Similarly, Medicare Advantage Plans, Health Plans and consumers rely on competition between independent physicians and physicians employed by GC serving Northumberland County residents to obtain the best combination of price and quality for primary and non-tertiary specialist physician services.

31. The provision of primary and non-tertiary specialist physician services constitutes a line of commerce or relevant product market.

VI. Market Concentration

32. Market concentration would increase substantially as a result of the proposed combination of GMC and SACH. The combined entity would control 60% of the market for primary and secondary in-patient Acute-Care Hospital services. GMC is the largest Acute-Care Hospital, and SACH is the second largest Acute-Care Hospital in the relevant geographic market.

33. In addition, the physicians serving patients in Northumberland County are either employed physicians of GC, independent physicians with privileges at SACH or independent physicians with privileges at Sunbury.

34. The combined entity would control the majority of primary and non-tertiary specialist services in Northumberland County if the independent physicians with privileges at SACH did not retain those privileges.

35. The proposed merger increases concentration significantly in the primary and secondary inpatient Acute-Care Hospital services market sold to Medicare Advantage Plans in the relevant geographic market.

36. There are no substitutes for the primary and secondary inpatient Acute-Care Hospital services sold to Medicare Advantage Plans provided by acute-care hospitals.

37. In the foreseeable future, no new Acute-Care Hospital is likely to enter the relevant geographic market.

38. The proposed merger may increase concentration in primary and non-tertiary specialist physician services in the relevant market if independent physicians with privileges at SACH lose their privileges after this merger.

39. In the foreseeable future, no new primary or non-tertiary specialist physician is likely to enter the relevant geographic market.

VII. Violation

40. As a direct result of the merger, competition for primary and secondary inpatient Acute-Care Hospital services sold to Medicare Advantage Plans and competition for primary and non-tertiary specialist physician services in the relevant geographic market may be substantially lessened or a monopoly in trade and commerce may be created in the following ways, among others:

- A. Existing competition and the potential for increased competition between GMC and SACH for the provision of primary and secondary inpatient Acute-Care Hospital services sold to Medicare Advantage Plans in the relevant markets may be permanently eliminated;

- B. Concentration in the relevant geographic and product markets may be substantially increased;
- C. The likelihood of collusion in the relevant markets may be substantially increased;
- D. Increased concentration in the relevant markets may enhance the ability of the merged entities to increase prices and decrease quality of service with little fear that such price increases and decreases in quality of service will be defeated by existing fringe competitors or new market entrants;
- E. By eliminating significant, beneficial competition between GMC and SACH, the merger may vest GMC with an increased ability and incentive to demand supra-competitive reimbursement rates from Medicare Advantage Plans.

41. The proposed acquisition violates the Pennsylvania State Common Law Doctrine against Suppression of Competition.

42. The proposed acquisition threatens loss or damage to the general welfare and economy of the Plaintiff and to the citizens of the Commonwealth of Pennsylvania.

VIII. Injury

43. Unless the violations described above are enjoined, the Commonwealth of Pennsylvania will suffer direct, immediate and irreparable damage to its general economy and There is no adequate remedy at law.

IX. Relief Requested

WHEREFORE, plaintiff prays:

(a) That the proposed merger of GMC and SACH be adjudged to be in violation of the Pennsylvania State Common Law Doctrine Against Suppression of Competition.

(b) That defendants, their parents, subsidiaries, affiliates, directors, officers, agents, successors and assigns and all others acting on their behalf, be preliminarily and permanently enjoined from taking any action directly or indirectly to exercise market power in the relevant markets;

(c) That defendants be ordered to pay plaintiff's costs and attorneys' fees; and

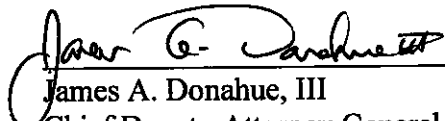
(d) That the Court grant such other relief as it deems appropriate.

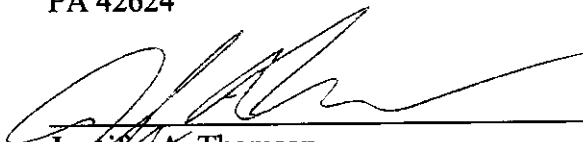
Dated: July 26, 2011

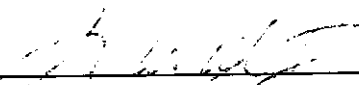
Respectfully submitted,

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