



U.S. Department of Justice

Antitrust Division

Office of the Assistant Attorney General

Washington, D.C. 20530

JAN 7 1993

Gregory G. Binford, Esquire
Benesch, Friedlander, Coplan & Aronoff
1100 Citizens Building
850 Euclid Avenue
Cleveland, Ohio 44114-3399

Dear Mr. Binford:

This letter responds to your request of September 20, 1990, on behalf of Case Western Reserve University School of Medicine (Case Western USM) and University Hospitals of Cleveland (UHC) for the issuance of a Business Review letter pursuant to the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6. You have requested a statement of the Department's current enforcement intentions with respect to a proposal to use a single agent to negotiate contract terms and fees with third-party payers on behalf of the nineteen separate physician practice groups that provide medical care at UHC.

We understand that UHC is a teaching hospital affiliated with the Case Western Reserve USM. At UHC physicians are organized into different medical specialties. There are thirteen different specialties or departments, including the Surgery Department which has seven sub-specialty groups, for a total of nineteen practice groups.

Presently, each of the nineteen practice groups separately negotiates and contracts with third-party payers. Under your proposal, a single agent would handle those functions as follows. UHC would designate an attorney to negotiate with third-party payers on behalf of all the practice groups, and any contract entered into for a practice group would be independent from other contracts. Each practice group would provide the agent with a list of medical procedures and related ranges of prices for negotiating fees for each procedure. Third-party payers would be advised that they would be free to conduct negotiations directly with any practice group. Each practice group, similarly, would be free to conduct negotiations directly with a third-party payer. If the negotiations proceeded through the agent, each practice group still would be free to accept or reject the contract as negotiated. If any group rejected the

negotiated contract it could renegotiate or decide not to contract.

According to the information you have provided and the information we have gathered, because the present system may result in nineteen different negotiations and contracts, it has become burdensome and unwieldy. At least one third-party payer has informed the practice groups that unless the process is streamlined, it may move its business to hospitals with more efficient contracting procedures. Changing the method of negotiation is expected to lower the costs associated with contracting by expediting negotiations and facilitating the bargaining process. Hence, there appears to be a procompetitive justification for this proposal.

After careful consideration of the information provided by you and from our investigation, the Department has concluded that it has no present intention of challenging on antitrust grounds your proposed method for negotiating and contracting with third-party payers. The Department would be concerned if the purpose or effect of the proposed conduct were to increase the likelihood that UHC's practice groups could successfully coordinate their interactions beyond the limited scope of each group's activity at UHC, such as by express or tacit collusion on pricing with competing providers. The Department has concluded, however, that the present proposal is unlikely to facilitate such anticompetitive conduct.

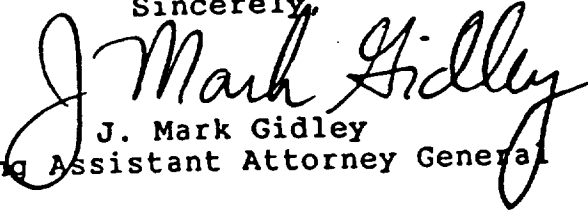
In reaching this conclusion, we have considered the facts that each group is a fully integrated joint venture and that the physician members of each group, who are salaried employees of the hospital, confine their practice to their respective practice group. Although there are certain overlapping procedures between some of the physician practice groups, none of the practice groups are in meaningful competition with each other. Further, the safeguards built into the proposal (i.e., allowing third-party payers to contract directly with the practice groups if they prefer, and maintaining confidentiality of fee information received from each practice group) ensures that the proposal is unlikely to increase the availability of fee and cost information among competing providers that would likely facilitate collusion. We have also considered that in the City of Cleveland there are approximately twenty-five hospitals that provide primary and secondary health care services, six tertiary care hospitals, and three research and teaching tertiary centers, including UHC. Our investigation revealed that these hospital alternatives were sufficient to give third-party payers competitive options to contracting with the UHC physicians. Under these circumstances, it does not appear likely that any UHC practice group or groups would be able to increase market power in the Greater Cleveland area through adoption of your proposal.

For the foregoing reasons, the Department has no present intention to challenge your proposal. In accordance with our normal practice, however, the Department remains free to bring

whatever action or proceeding it subsequently comes to believe is required by the public interest if the actual operation of this proposal proves to be anticompetitive in purpose or effect.

This statement is made in accordance with the Department's business review procedure, 28 C.F.R. § 50.6. Pursuant to its terms, your business review request and this letter will be made publicly available immediately, and any supporting data will be made publicly available within thirty days of the date of this letter, unless you request that any part of the materials be withheld in accordance with paragraph 10(c) of the Business Review Procedure.

Sincerely,


J. Mark Gidley
Acting Assistant Attorney General

Enclosure



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APR 12 1993

Dear Mr. Binford:

It has come to our attention that the January 7, 1993, Business Review Letter issued by the Antitrust Division at your request on behalf of Case Western Reserve University School of Medicine and University Hospitals of Cleveland contains an inadvertent error on page two. The first sentence of the third full paragraph on that page should read:

In reaching this conclusion, we have considered the facts that each group is a fully integrated joint venture and that the physician members of each group, who are salaried employees of the group, confine their practice to their respective practice groups. (change underlined).

This statement is made in accordance with the Department's business review procedure, 28 C.F.R. § 50.6. Pursuant to its terms, this letter will be made publicly available immediately.

Sincerely,

John W. Clark
Acting Assistant Attorney General