

withdrawn its consent, which it may do at any time before the entry of the proposed final judgment by serving notice thereof on the defendants and by filing that notice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 so long as 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.

Dated: October 2, 2002.

For Plaintiff United States of America:

**Weun Wang,**

*Litigation II Section, Antitrust Division, U.S. Department of Justice.*

September 26, 2002.

For Defendant Mountain Health Care, P.A.:

**John J. Miles,**

*Ober, Kaler, Grimes & Shriver, Counsel for Defendant Mountain Health Care, P.A.*

## 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 to § 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 section 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

## Competitive Impact Statement

The United States, pursuant to Section 2 of the Antitrust Procedures and Penalties Act